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Attorneys for Defendant
TACTICAL GEAR HEADS LLC

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO - UNLIMITED CIVIL

TROY MCFADYEN, in his Individual Capacity,
and as Heir at Law and Successor in Interest to
MICHELLE MCFADYEN, Deceased;

PHILLIP BOW and SIA BOW, as Heirs at Law
and Successors in Interest to MICHELLE
MCFADYEN, Deceased;

BOB STEELE, a Dependent Adult, by and
through his Guardian ad Litem, DAVID
STEELE, Heir at Law and Successor in Interest
to DIANA STEELE, Deceased;

MICHAEL ELLIOTT, Heir at Law and
Successor in Interest to DANIEL LEE ELLIOT
II, Deceased, and DIANA STEELE, Deceased;

G.E., a Minor, by and through his Guardian ad
Litem, ALMA FEITELBERG, Heir at Law and
Successor in Interest to DANIEL LEE ELLIOT
II, Deceased, and DIANA STEELE, Deceased;

M.E., a Minor, by and through her Guardian ad
Litem, LATISHA CORNWALL, Heir at Law
and Successor in Interest to DANIEL LEE
ELLIOT II, Deceased, and DIANA STEELE,
Deceased;

MARCIA MCHUGH, Heir at Law and
Successor in Interest to JOSEPH MCHUGH,
Deceased;

) Case No. CIV-DS1935422

) ASSIGNED TO HON. DAVID COHN IN
) DEPT. S-26

) **JOINT CASE MANAGEMENT**
) **CONFERENCE STATEMENT**

) Complaint Filed: 11/14/2019
) Trial Date: None

) Date: December 4, 2020
) Time: 9:00 a.m.
) Dept: S-26

1
2 GRACE MCHUGH, Heir at Law and Successor
3 in Interest to JOSEPH MCHUGH, Deceased;
4 A.H., a Minor, by and through his Guardian ad
5 Litem, MARIA MONROY;
6 TIFFANY PHOMMATHEP;
7 JOHN PHOMMATHEP SR.;
8 J.P. II, a Minor, by and through his Guardian ad
9 Litem, TIFFANY PHOMMATHEP;
10 J.P., a Minor, by and through his Guardian ad
11 Litem, TIFFANYPHOMMATHEP;
12 N.P., a Minor, by and through his Guardian ad
13 Litem, TIFFANYPHOMMATHEP;
14 JAMES WOODS, JR.; and JAMES WOODS,
15 SR.
16
17 Plaintiffs,
18
19 v.
20
21 GHOST GUNNER INC., d/b/a
22 GHOSTGUNNER.NET;
23 DEFENSE DISTRIBUTED d/b/a
24 GHOSTGUNNER.NET
25 CODY WILSON d/b/a GHOSTGUNNER.NET
26 BLACKHAWK MANUFACTURING GROUP
27 INC., d/b/a 80PERCENTARMS.COM;
28 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-

1 LOWER .COM; AR-)
 2 15LOWERRECEIVERS.COM; and)
 3 80LOWERJIG.COM;)
 4 JAMES TROMBLEE, JR., d/b/a)
 5 USPATRIOTARMORY.COM;)
 6 INDUSTRY ARMAMENT INC., d/b/a)
 7 AMERICANWEAPONSCOMPONENTS.COM;)
 8 THUNDER GUNS LLC, d/b/a)
 9 THUNDERTACTICAL.COM;)
 10 DOES 1-100, Inclusive,)
 11 Defendants.)

12 Pursuant to this Court’s “Guidelines for The Complex Litigation Program,” the parties
 13 hereby submit this Joint Case Management Conference Statement.

14 **I. BRIEF DESCRIPTION OF CASE AND PARTIES**

15 This wrongful death and personal injury action arises out of a series of shootings that
 16 occurred in Rancho Tehama Reserve, an unincorporated community in Tehama County, on
 17 November 13-14, 2017. During his rampage, 44-year old Kevin Janson Neal shot and killed 5
 18 people and injured 18 others at 8 separate crime scenes, including an elementary school. Neal
 19 died by suicide shortly before being apprehended by local law enforcement officers.

20 Neal reportedly used several handguns and at least one semi-automatic rifle during the
 21 shootings. Plaintiffs allege the involved rifle was assembled using a variety of readily available
 22 component parts, along with a lower receiver component of unknown origin. It is further alleged
 23 that this lower receiver was originally obtained by Neal or others as an unfinished receiver – or
 24 “receiver blank” – which was then machined further to become an operable lower receiver
 25 incorporated into a functioning firearm. It is alleged the rifle recovered from Neal at the crime
 26 scene was not marked with a serial number or other identifying information suggesting the lower
 27 receiver had been completed by someone who was not a Federal Firearms Licensee.

28 The wrongful death plaintiffs in this case are family members, heirs at law or successors
 in interest to decedents Michelle McFadyen, Diana Steele, Daniel Elliot II, and Joseph McHugh;

1 the personal injury plaintiffs are Tiffany Phommathep, John Phommathep Sr., three minor
2 Phommathep children, James Woods Jr. and James Woods Sr.

3 Defendants in this case are manufacturers and/or distributors of lower receiver blanks
4 and/or tools capable of making an operable lower receiver from a lower receiver blank.

5 **II. STATUS OF SERVICE AS TO EACH PARTY**

6 Plaintiffs have served the following defendants who thereafter filed a general or special
7 Notice of Appearance:

8 Ghost Gunner Inc. dba Ghostgunner.net;

9 Defense Distributed (erroneously sued as Ghost Gunner Inc. dba Ghostgunner.net, Cody
10 Wilson, and Cody Wilson dba Ghostgunner.net);

11 MFY Technical Solutions LLC dba 5DTactical.com;

12 Thunder Guns LLC dba Thundertactical.com;

13 Ryan Beezley and Bob Beezley;

14 Blackhawk Manufacturing Group Inc. dba 80Percentarms.com;

15 Juggernaut Tactical Inc. dba JTactical.com;

16 Ghost Firearms LLC dba Ghostguns.com, and;

17 Tactical Gear Heads LLC, dba 80-Lower.com; AR-15Lowerreceivers.com and
18 80Lowerjig.com.

19 The following defendants have been served but have not yet filed a Notice of
20 Appearance:

21 James Tromblee Jr. dba USPatriotarmory.com, and;

22 Industry Armament Inc. dba Americanweaponscomponents.com

23 The following defendant has not been served, as he is believed by Plaintiffs to be evading
24 service: Ghost America LLC dba Ghostguns.com. On October 7, 2020, this Court granted
25 plaintiffs' motion to serve this defendant via the Secretary of State. Plaintiffs' counsel received a
26 copy of this Order on November 13, 2020, and will be affecting service on the Secretary of State
27 on behalf of Ghost America LLC dba Ghostguns.com within the next week.

1 While neither plaintiffs nor defendants anticipate adding any other parties or potential
2 parties at this time, it is possible further investigation and/or early discovery may result in the
3 identities of additional parties, whether as new defendants or cross-defendants.

4 **III. EACH PARTY'S POSITION RE WHETHER THE CASE SHOULD BE**
5 **TREATED AS COMPLEX**

6 Based on the factors set forth in California Rule of Court 3.400(b), all parties believe this
7 case should be treated as a complex case.

8 **IV. WHETHER THERE ARE APPLICABLE ARBITRATION AGREEMENTS**

9 The parties are not aware of any applicable arbitration agreements at the present time.

10 **V. WHETHER THERE IS RELATED LITIGATION PENDING IN STATE**
11 **OR FEDERAL COURT**

12 There is a virtually identical related matter currently pending in Orange County Superior
13 Court brought by one other shooting victim – *Francisco Guidino Cardenas v. Ghostgunner Inc.*
14 *dba Ghostgunner.net*, Orange County Superior Court Case No. 30-2019-01111797-CU-PO-CJC.

15 In that action, which has not been designated as complex, several defendants filed a
16 Motion to Permit Filing of Petition for Coordination or, in the Alternative, to Transfer and
17 Consolidate Actions, for the purpose of having the *Cardenas* matter and the instant matter
18 handled by a single court. Plaintiffs are filing a *statement of non-opposition/agreement* to this
19 request. The hearing of that motion is set for January 25, 2021, at 10:30 a.m. in Dept. C26 before
20 Hon. Gregory H. Lewis and the remainder of that case has been stayed pending a ruling on that
21 motion.

22 In addition, there are multiple civil rights actions arising out of the same shooting but
23 naming a different group of defendants, including the County of Tehama, Tehama County
24 Sheriff's Office, Tehama County Sheriff Dave Hencratt, Tehama County Asst. Sheriff Phil
25 Johnston, Estate of Kevin Neal, The Rancho Tehama Association, and DOES 1 – 20. Those
26 matters are pending in the United States District Court for the Eastern District of California
27 before District Judge Troy Nunley. The lead case is captioned *Troy McFadyen, et al. v. County*

1 of *Tehama, et al.*, Case No. 2:18-cv-02912-TLN-DMC, and it is being prosecuted by the
2 undersigned plaintiffs' counsel.

3 The related cases pending before Judge Nunley include:

4 No. 2:18-CV-02916-TLN-DMC

5 No. 2:18-CV-02927-TLN-DMC

6 No. 2:18-CV-02918-TLN-DMC

7 No. 2:18-CV-02918-WBS-DMC

8 No. 2:18-CV-02917-TLN-DMC

9 **VI. DESCRIPTION OF MAJOR LEGAL AND FACTUAL ISSUES**
10 **INVOLVED IN THE CASE**

11 In this action, plaintiffs contend the rifle Neal used incorporated a lower receiver
12 component that had been supplied illegally to Neal or others who then performed machining
13 operations to convert it into a functional component of a completed rifle. The various causes of
14 action alleged in the Complaint revolve around the claim that a receiver blank itself is essentially
15 a firearm and thus illegal to sell into California without a Federal Firearms Licensee first
16 performing a background check on the purchaser and should have been marked with a serial
17 number. Had defendant(s) done so, plaintiffs allege Neal would not have been able to acquire the
18 involved rifle because he was a prohibited person under federal and state firearms laws and could
19 not have passed a background check.

20 Defendants deny these allegations and further deny they sold the lower receiver blank
21 incorporated into the subject rifle, that the lower receiver blank was illegal to sell, and that any
22 act or omission on their part was a substantial factor in causing plaintiff's injuries and damages.

23 The causes of action in plaintiffs' Complaint include:

- 24 1. Negligence;
- 25 2. Negligence Per Se;
- 26 3. Negligent Entrustment;
- 27 4. Public Nuisance;

- 1 5. Violation Of Business And Professions Code Section 17200 (Unfair And
2 Unlawful Sales Practices), and;
- 3 6. Violation Of Business And Professions Code Section 17200 (Unfair Marketing
4 Tactics).
- 4 **A. Disputed Legal Issues**
- 5 1. Whether plaintiffs can state a claim against any defendant when they concede
6 they do not know which defendant, if any of them, sold a receiver blank and/or tools capable of
7 finishing a receiver blank into a functioning receiver to the shooter
- 8 2. Whether it is legal to sell receiver blanks in California under either or both state
9 or federal law, including interpretations of regulations promulgated by the Bureau of Alcohol,
10 Tobacco, Firearms and Explosives;
- 11 3. Whether any of the defendant's conduct constituted actionable negligence;
- 12 4. Whether negligence per se is an actionable stand-alone cause of action;
- 13 5. Whether any of the defendant's conduct constituted actionable negligent
14 entrustment;
- 15 6. Whether any of the defendant's conduct was an actionable public nuisance;
- 16 7. Whether any of the defendant's conduct is actionable under Business &
17 Professions Code section 17200;
- 18 8. Whether any of the defendant's conduct is actionable under Business &
19 Professions Code section 17500;
- 20 9. Whether any of the defendant's conduct included constitutionally protected
21 commercial speech, and;
- 22 10. Whether the comparative fault of other unnamed parties was a substantial factor
23 in causing plaintiffs' injuries and damages.

24 **B. Disputed Factual Issues**

- 25 1. The facts and circumstances surrounding the underlying shootings perpetrated by
26 Neal, a non-party to this action;
- 27
- 28

1 2. The facts and circumstances surrounding how Neal came into possession of the
2 involved rifle;

3 3. The facts and circumstances surrounding the fabrication and assembly of the
4 involved rifle;

5 4. Positive identification of the source of the lower receiver component of the
6 involved rifle;

7 5. Causation, and;

8 6. Damages.

9 **VII. ANTICIPATED MOTIONS AND TIMING OF SAME**

10 Based on the facts available at present, some defendants anticipate the filing of
11 jurisdictional motions. In addition, some or all of the defendants anticipate filing demurrers
12 and/or motions to strike based on the allegations in plaintiffs' Complaint. Finally, should this
13 case proceed beyond the pleading stage, some defendants anticipate filing summary judgment
14 motions which may raise issues of product identification and/or issues relating to the legality of
15 receiver blanks in general, and the receiver blank allegedly incorporated into the involved rifle
16 specifically.

17 **VIII. DISCOVERY/TRIAL PREPARATION PROCEDURES ON WHICH THE**
18 **PARTIES AGREE**

19 In light of the pending motion in the related *Cardenas* matter, which seeks coordination
20 of the two matters, the parties request the stay currently in place in this matter be extended until
21 there is a ruling on coordination. If the matters are coordinated in Orange County, there will be
22 no need for the further involvement of this Court. Conversely, if the matters are coordinated in
23 this Court, the parties request a Further Case Management Conference to address discovery and
24 trial preparation procedures.

25 Pending resolution of the coordination issue, the parties are in agreement that case
26 documents can be served via email and/or regular mail without need for a third-party vendor.

1 **IX. ESTIMATE OF TIME NEEDED TO CONDUCT DISCOVERY**
2 **AND PREPARE FOR TRIAL**

3 See Section VIII above.

4 **X. THE PARTIES' VIEWS ON AN APPROPRIATE MECHANISM FOR**
5 **ALTERNATIVE DISPUTE RESOLUTION**

6 Given the significant legal issues involved, and the likelihood of substantial motion
7 practice, it is premature to consider ADR mechanisms. The parties therefore request this topic be
8 reconsidered at a future case management conference.

9 **XI. COORDINATION AND/OR CONSOLIDATION**

10 As indicated above, there is a related matter currently pending in Orange County Superior
11 Court. A Motion to Permit Filing of Petition for Coordination or, in the Alternative, to Transfer
12 and Consolidate Actions is pending in that action, which plaintiffs are not opposing. Should a
13 petition for coordination be filed, it will be necessary for the Judicial Council to decide if
14 coordination is warranted and, if so, whether the coordinated proceeding should be assigned to
15 this Court or to the Orange County Superior Court. If the parties believe the proper venue should
16 be in one of these two counties, they will have the opportunity to express that preference in
17 connection with the coordination petition.

18 Respectfully submitted,

19
20 DATED: November 18, 2020

BARR & MUDFORD

21
22 /s/ Estee Lewis
23 BRANDON STORMENT
24 ESTEE LEWIS
25 Attorney for Plaintiffs

26 ///

27 ///

28 ///

1 DATED: November 17, 2020

GORDON REES SCULLY MANSUKHANI
LLP

2
3 /s/ John Cogger
CRAIG MARIAM
4 JOHN COGGER
SEBASTIAN VAN ROUNDSEBURG
5 Attorneys for Defendant Juggernaut Tactical
6 Inc. dba JTactical.com

7 DATED: November 17, 2020

PETTIT KOHN INGRASSIA LUTZ &
DOLIN PC

8
9 /s/ Justin Felton
GRANT WATERKOTTE
10 JUSTIN FELTON
Attorneys for Defendant Defense Distributed
11 (Erroneously sued as Ghost Gunner Inc dba
12 Ghostgunner.net; Cody R. Wilson; Cody
13 Wilson dba Ghostgunner.net)

14 DATED: November 17, 2020

LIVINGSTON LAW FIRM

15 /s/ Craig Livingston
CRAIG LIVINGSTON
16 CRYSTAL VAN DER PUTTEN
17 Attorney for Defendant Tactical Gear Heads
18 LLC dba 80-lower.com;
Ar-15LowerReceivers.com

19
20 DATED: November 17, 2020

MICHEL & ASSOCIATES PC

21 /s/ Sean Brady
SEAN BRADY
22 C.D. MICHEL
23 Attorney for Defendant Blackhawk
24 Manufacturing Group Inc dba
80PercentArms.com;
25 Ryan Beezley and Bob Beezley dba
RBTacticalTooling.com;
26 Ghost Firearms LLC dba Ghostguns.com
27 MFY Technical Solutions LLC dba
5dTactical.com;
28 Thunder Guns LLC dba thundertactical.com

McFadyen, et al. v. Ghost Gunner, Inc., d/b/a GhostGunner.Net, et.al., Case No. CIV-DS1935422
JOINT CASE MANAGEMENT CONFERENCE STATEMENT

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PROOF OF SERVICE

I, the undersigned, hereby declare that I am over the age of eighteen years and not a party to the within action. My business address is 1600 South Main Street, Suite 280, Walnut Creek, California 94596. On the date set forth below, I served the following document(s):

JOINT CASE MANAGEMENT CONFERENCE STATEMENT

upon the following at the address(es) stated below:

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Catie T. Barr, Esq.
Brandon Storment, Esq.
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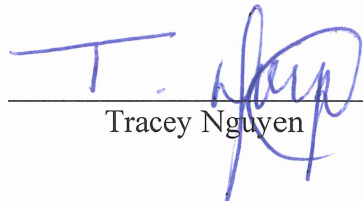
*Attorneys for Defendant Defense Distributed
(Erroneously sued as Ghost Gunner, Inc. dba
Ghostgunner.net; Cody R. Wilson; Cody
Wilson dba Ghostgunner.net)*

Service was accomplished as follows:

X BY US MAIL, According to Normal Business Practices. At my place of business at the above address, I sealed the above document(s) in an envelope addressed to the above, and I placed that sealed envelope for collection and mailing following ordinary business practices, for deposit with the U.S. Postal Service. I am readily familiar with the business practice at my place of business for the collection and processing of correspondence for mailing with the U.S. Postal Service. Correspondence so collected and processed is deposited with the U.S. Postal Service the same day in the ordinary course of business, postage fully prepaid.

X BY ELECTRONIC TRANSMISSION: Based on a Court Order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be electronically sent to the persons on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 18, 2020, at Walnut Creek, California.



Tracey Nguyen

LAW FIRM
livingston

A Professional Corporation

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Walnut Creek, California 94596

FIRST-CLASS



US POSTAGE

02 1P
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