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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

**CERTAIN DEFENDANTS' UPDATED  
CASE MANAGEMENT CONFERENCE  
STATEMENT**

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

Date: February 10, 2021  
Time: 9:00 a.m.  
Dept: S-26

1 )  
2 GRACE MCHUGH, Heir at Law and Successor )  
in Interest to JOSEPH MCHUGH, Deceased; )  
3 A.H., a Minor, by and through his Guardian ad )  
4 Litem, MARIA MONROY; )  
5 TIFFANY PHOMMATHEP; )  
6 JOHN PHOMMATHEP SR.; )  
7 J.P. II, a Minor, by and through his Guardian ad )  
Litem, TIFFANY PHOMMATHEP; )  
8 J.P., a Minor, by and through his Guardian ad )  
9 Litem, TIFFANYPHOMMATHEP; )  
10 N.P., a Minor, by and through his Guardian ad )  
Litem, TIFFANYPHOMMATHEP; )  
11 JAMES WOODS, JR.; and JAMES WOODS, )  
SR. )  
12 )  
13 Plaintiffs, )  
14 )  
15 v. )  
16 GHOST GUNNER INC., d/b/a )  
GHOSTGUNNER.NET; )  
17 DEFENSE DISTRIBUTED d/b/a )  
GHOSTGUNNER.NET )  
18 CODY WILSON d/b/a GHOSTGUNNER.NET )  
19 BLACKHAWK MANUFACTURING GROUP )  
INC., d/b/a 80PERCENTARMS.COM; )  
20 RYAN BEEZLEY and BOB BEEZLEY, d/b/a )  
RBTACTICALTOOLING.COM; )  
21 GHOST AMERICA LLC, d/b/a )  
22 GHOSTGUNS.COM; )  
23 GHOST FIREARMS LLC, d/b/a GRID )  
DEFENSE and GHOSTRIFLES.COM; )  
24 JUGGERNAUT TACTICAL INC., d/b/a )  
JTACT1CAL.COM; )  
25 MFY TECHNICAL SOLUTIONS LLC, d/b/a )  
26 5DTACTICAL.COM; )  
27 TACTICAL GEAR HEADS LLC, d/b/a 80- )  
28 )

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

10 Pursuant to this Court’s “Guidelines for The Complex Litigation Program,” certain  
 11 defendants hereby submit this Updated Case Management Conference Statement.

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

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

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

26 The wrongful death plaintiffs in this case are family members, heirs at law or successors  
 27 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

18  
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 Ghost America LLC dba Ghostguns.com

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

1           **III.   EACH PARTY’S POSITION RE WHETHER THE CASE SHOULD BE**  
2           **TREATED AS COMPLEX**

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

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

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

7           **V.   WHETHER THERE IS RELATED LITIGATION PENDING IN STATE**  
8           **OR FEDERAL COURT**

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

12           In that action, which has not been designated as complex, several defendants filed a  
13 Motion to Permit Filing of Petition for Coordination or, in the Alternative, to Transfer and  
14 Consolidate Actions, for the purpose of having the *Cardenas* matter and the instant matter  
15 handled by a single court. **The motion was unopposed and heard on January 25, 2021, at**  
16 **10:30 a.m. in Dept. C26 before Hon. Gregory H. Lewis. The motion was granted and the**  
17 **Petition for Coordination was filed on February 5, 2021.**

18           In addition, there are multiple civil rights actions arising out of the same shooting but  
19 naming a different group of defendants, including the County of Tehama, Tehama County  
20 Sheriff’s Office, Tehama County Sheriff Dave Hencratt, Tehama County Asst. Sheriff Phil  
21 Johnston, Estate of Kevin Neal, The Rancho Tehama Association, and DOES 1 – 20. Those  
22 matters are pending in the United States District Court for the Eastern District of California  
23 before District Judge Troy Nunley. The lead case is captioned *Troy McFadyen, et al. v. County*  
24 *of Tehama, et al.*, Case No. 2:18-cv-02912-TLN-DMC, and it is being prosecuted by the  
25 plaintiffs’ counsel of record in this pending matter.

26       ///

27       ///

1 The related cases pending before Judge Nunley include:

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

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

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

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

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

7 **VI. DESCRIPTION OF MAJOR LEGAL AND FACTUAL ISSUES**  
8 **INVOLVED IN THE CASE**

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

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

21 The causes of action in plaintiffs' Complaint include:

- 22 1. Negligence;
- 23 2. Negligence Per Se;
- 24 3. Negligent Entrustment;
- 25 4. Public Nuisance;
- 26 5. Violation Of Business And Professions Code Section 17200 (Unfair And  
27 Unlawful Sales Practices), and;
- 28

1           6.       Violation Of Business And Professions Code Section 17200 (Unfair Marketing  
2                   Tactics).

3           **A.       Disputed Legal Issues**

4           1.       Whether plaintiffs can state a claim against any defendant when they concede  
5 they do not know which defendant, if any of them, sold a receiver blank and/or tools capable of  
6 finishing a receiver blank into a functioning receiver to the shooter

7           2.       Whether it is legal to sell receiver blanks in California under either or both state  
8 or federal law, including interpretations of regulations promulgated by the Bureau of Alcohol,  
9 Tobacco, Firearms and Explosives;

10          3.       Whether any of the defendant's conduct constituted actionable negligence;

11          4.       Whether negligence per se is an actionable stand-alone cause of action;

12          5.       Whether any of the defendant's conduct constituted actionable negligent  
13 entrustment;

14          6.       Whether any of the defendant's conduct was an actionable public nuisance;

15          7.       Whether any of the defendant's conduct is actionable under Business &  
16 Professions Code section 17200;

17          8.       Whether any of the defendant's conduct is actionable under Business &  
18 Professions Code section 17500;

19          9.       Whether any of the defendant's conduct included constitutionally protected  
20 commercial speech, and;

21          10.      Whether the comparative fault of other unnamed parties was a substantial factor  
22 in causing plaintiffs' injuries and damages.

23           **B.       Disputed Factual Issues**

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

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

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

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

5           5.       Causation, and;

6           6.       Damages.

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

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

15           **VIII.   DISCOVERY/TRIAL PREPARATION PROCEDURES ON WHICH THE**  
16           **PARTIES AGREE**

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

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

25           **IX.    ESTIMATE OF TIME NEEDED TO CONDUCT DISCOVERY**  
26           **AND PREPARE FOR TRIAL**

27           See Section VIII above.



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1 DATED: February 5, 2021

PETTIT KOHN INGRASSIA LUTZ &  
DOLIN PC

2  
3 /s/ Justin Felton  
4 GRANT WATERKOTTE  
5 JUSTIN FELTON  
6 Attorneys for Defendant Defense Distributed  
7 (Erroneously sued as Ghost Gunner Inc dba  
8 Ghostgunner.net; Cody R. Wilson; Cody  
9 Wilson dba Ghostgunner.net)

8 DATED: February 5, 2021

MICHEL & ASSOCIATES PC

9 /s/ Sean Brady  
10 SEAN BRADY  
11 C.D. MICHEL  
12 Attorney for Defendant Blackhawk  
13 Manufacturing Group Inc dba  
14 80PercentArms.com;  
15 Ryan Beezley and Bob Beezley dba  
16 RBTacticalTooling.com;  
17 Ghost Firearms LLC dba Ghostguns.com  
18 MFY Technical Solutions LLC dba  
19 5dTactical.com;  
20 Thunder Guns LLC dba thundertactical.com  
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1 **PROOF OF SERVICE**

2 I, the undersigned, hereby declare that I am over the age of eighteen years and not a  
3 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):

4 **CERTAIN DEFENDANTS' UPDATED CASE MANAGEMENT CONFERENCE**  
5 **STATEMENT**

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

7 Douglas S. Mudford, Esq.  
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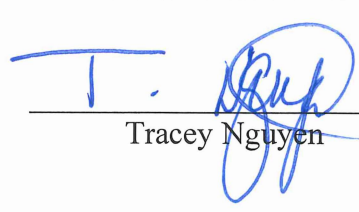
10 *Attorneys for Defendants*  
11 *Defense Distrubutes*  
12 *Cody R. Wilson*

13 Service was accomplished as follows:

14 transmission machine, immediately following the transmission.

15 **X BY ELECTRONIC TRANSMISSION:** Based on California Rule of Court  
16 Emergency Rule 12(b) requiring a party represented by counsel, who has appeared in an  
17 action or proceeding, to accept electronic service of a notice or document that may be  
18 served by mail, express mail, overnight delivery, or facsimile transmission,  
19 subsequently codified in Code of Civil Procedure section 1010.6, I caused the  
20 documents to be electronically sent to the persons listed above. Before first serving  
21 electronically, I confirmed through prior email communications the appropriate  
22 electronic service address for counsel being served. I did not receive, within a  
23 reasonable time after the transmission, any electronic message or other indication that  
24 the transmission was unsuccessful.

25 I declare under penalty of perjury under the laws of the State of California that the  
26 foregoing is true and correct, and that this declaration was executed on February 5, 2021, at  
27 Walnut Creek, California.

28  
  
Tracey Nguyen