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JUDICIAL COUNCIL OF CALIFORNIA
CHAIR OF THE JUDICIAL COUNCIL

FRANCISCO GUDINO CARDENAS, an
individual,

Plaintiff,

v.

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

Defendants.

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

Plaintiffs,

v.

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

Defendants.

Judicial Council Coordination Proceeding

JCCP NO.

Orange County Superior Court Case No. 30-
2019-01111797-CU-PO-CJC

San Bernardino Superior Court Case No. CIV
DS 1935422

**PETITION FOR COORDINATION OF
ACTIONS; SUPPORTING MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

[Filed concurrently with the supporting
declaration of Sean A. Brady]

1 TO THE CHAIRPERSON OF THE JUDICIAL COUNCIL:


2 Pursuant to section 404.4 of the California Code of Civil Procedure, Petitioners Ghost
3 Firearms, LLC, Thunder Guns, LLC, Ryan Beezley and Bob Beezley, and MFY Technical
4 Solutions, LLC submit this petition to request assignment of a judge to determine whether it
5 would be appropriate to coordinate the following two actions : *Francisco Gudino Cardenas v.*
6 *Ghost Gunner, Inc. et al.*, Case No. 30-2019-01111797-CU-PO-CJC, pending in the Superior
7 Court of Orange County, and *Troy McFadyen, et al v. Ghost Gunner, Inc., et al*, Case No. CIV
8 DS 1935422, pending in the Superior Court of San Bernardino. The full title of each action is
9 shown in the copies of the complaints attached to the declaration of Sean A. Brady as Exhibits
10 "A" and "C." The January 25, 2021 order of Hon. Gregory H. Lewis granting Petitioners' motion
11 to submit this petition is attached to the supporting declaration of Sean A. Brady as Exhibit "B."

12 This petition is based on Code of Civil Procedure sections 404 and 404.1, California Rules
13 of Court, Rule 3.521, the attached memorandum of points and authorities, and the declaration of
14 Sean A. Brady. This petition is made on the ground that these actions share common questions of
15 law and fact, and that coordination of these actions will promote the ends of justice. The
16 declaration of Sean A. Brady sets forth facts showing that the actions are complex and that
17 coordination would satisfy the criteria set forth in Code of Civil Procedure section 404.1.

18 All Plaintiffs support coordination, as do almost all defendants except for a few who have
19 remained silent on the issue. However, Plaintiffs request that the coordinated action be assigned
20 to Orange County Superior Court, while Petitioners and all other defendants who have weighed in
21 believe that San Bernardino is the better venue. Due to the agreement on coordination generally,
22 with the sole dispute being over venue, Petitioners do not request a hearing at this time, however,
23 are prepared to attend such a hearing should this Council find a hearing necessary.

24 Dated: February 5, 2021

MICHEL & ASSOCIATES, P.C.

25 
26 Sean A. Brady
27 Attorney for Petitioners
28 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 Petitioners Ghost Firearms, LLC, Thunder Guns, LLC, Ryan Beezley and Bob Beezley,
4 and MFY Technical Solutions, LLC (“Petitioners”) bring this petition for coordination following
5 their receipt of permission to do so from the Honorable Judge Gregory H. Lewis of the Orange
6 County Superior Court. The actions to be coordinated are *Francisco Gudino Cardenas v. Ghost*
7 *Gunner, Inc. et al.*, Case No. 30-2019-01111797-CU-PO-CJC, which is pending in the Superior
8 Court of Orange County, and *Troy McFadyen, et al v. Ghost Gunner, Inc., et al*, Case No. CIV
9 DS 1935422, which is pending in the Superior Court of San Bernardino County. The complaints
10 for each are attached as Exhibits “A” and “C” to the Declaration of Sean A. Brady (“Brady
11 Decl.”), referred to respectively as the “*Cardenas* Complaint” and the “*McFadyen* Complaint”

12 The actions should plainly be coordinated. Both arise out of the same incident, include the
13 exact same defendants, and raise the exact same causes of action. In fact, the two complaints are
14 effectively identical, almost verbatim; the only real difference being the details specific to the
15 respective plaintiffs in each action. (*Cardenas* Complaint, *passim.*, and *McFadyen* Complaint,
16 *passim.*) The complaint in the *Cardenas* matter describes the *McFadyen* matter as a “related case”
17 that was filed the same day. (*Cardenas* Complaint, at 6:3-8.). The two matters are so linked that
18 the complaint in the *Cardenas* matter originally alleged that venue is proper in *Orange County*
19 because several defendants have their place of business in *San Bernardino* County (*Cardenas*
20 Complaint, at 5:20-25.)¹ As the two matters are essentially the same and undeniably complex,²
21 they meet Code of Civil Procedure Section 404’s criteria and thus can and should be coordinated.
22 If not coordinated, Petitioners will be subjected to duplicative filings and potentially conflicting
23

24 ¹ 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., ¶6,
26 Exhibit E.)

27 ² Plaintiff in the *Cardenas* matter, for some reason, did not label this case as complex on the
28 Civil Case cover sheet, but the plaintiffs in the related *McFadyen* matter did label their nearly
verbatim complaint as a complex matter. Plaintiff in the *Cardenas* matter has now acknowledged
that the matter is indeed complex. (Brady Decl., ¶12.) In the court’s order permitting the filing of
this petition, it found the matters to be complex. (Brady Decl., ¶3, Exhibit B.)

1 rulings and judgments should the two matters be allowed to proceed in two separate courts.

2 Significantly, the Plaintiffs in both matters agree that the two matters should be
3 coordinated, as do all defendants who have weighed in (some have remained silent on the issue,
4 but none has objected).

5 **II. STATEMENT OF FACTS**

6 On November 14, 2019, plaintiffs in the *McFadyen* matter filed their complaint. Plaintiffs
7 in that action assert the following causes of action: (1) Negligence; (2) Negligence Per Se; (3)
8 Negligent Entrustment; (4) Public Nuisance; (5) Violation of Business and Professions Code
9 Section 17200 (Unfair and Unlawful Sales Practices); and (6) Violation of Business and
10 Professions Code Section 17200 (Unfair Marketing Tactics). (*McFadyen* Complaint, *passim*).
11 The *McFadyen* Complaint names as defendants: GHOST GUNNER INC., d/b/a
12 GHOSTGUNNER.NET; DEFENSE DISTRIBUTED d/b/a GHOSTGUNNER.NET; CODY
13 WILSON d/b/a GHOSTGUNNER.NET; BLACKHAWK MANUFACTURING GROUP INC.,
14 d/b/a 80PERCENTARMS.COM; RYAN BEEZLEY and BOB BEEZLEY, d/b/a
15 RBTACTICALTOOLING.COM; GHOST AMERICA LLC, d/b/a GHOSTGUNS.COM; GHOST
16 FIREARMS LLC, d/b/a GRID DEFENSE and GHOSTRIFLES.COM; JUGGERNAUT
17 TACTICAL INC., d/b/a JTACTICAL.COM; MFY TECHNICAL SOLUTIONS LLC, d/b/a
18 5DTACTICAL.COM; TACTICAL GEAR HEADS LLC, d/b/a 80-LOWER.COM; AR-
19 15LOWERRECEIVERS.COM; and 80LOWERJIG.COM; JAMES TROMBLEE, JR., d/b/a
20 USPATRIOTARMORY.COM; INDUSTRY ARMAMENT INC., d/b/a
21 AMERICANWEAPONSCOMPONENTS.COM; and THUNDER GUNS LLC, d/b/a
22 THUNDERTACTICAL.COM. (*McFadyen* Complaint, 4:16-28.)

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

1 numbered paragraphs and entire pages are verbatim copies of each other.

2 Petitioners have all been served with the summons and complaint in both matters, but they
3 have not had to file a responsive pleading yet in either owing to the respective courts in both those
4 previously staying proceedings³. (Brady Decl., ¶3 and ¶5.) While Petitioners have no reason to
5 expect either court will refuse to grant further stays as needed until coordination is finalized,
6 Petitioners intend to submit an application requesting that the assigned judge nevertheless order a
7 stay of both matters pending its final ruling on this petition pursuant to rule 3.515 of the
8 California Rules of Court to avoid any potential conflicts.

9 Counsel for Petitioners has confirmed with counsel for six of the remaining nine
10 defendants to both of these matters that none of them objects to the coordination of these matters.
11 (Brady Decl., ¶11.). The remaining defendants have been unreachable, despite attempts by
12 Petitioners' counsel to contact them. (*Ibid.*) But none has expressed opposition to this petition.
13 (*Ibid.*) Counsel for Plaintiffs in both actions have also expressed that they do not oppose
14 coordination. (Brady Decl., ¶12, Exhibit F, and ¶13, Exhibit G.) However, Plaintiffs in both
15 actions have requested that the coordinated matter be assigned to Orange County without
16 explanation. Petitioners and several other defendants request that the coordinated matter be
17 assigned to San Bernardino County because the *McFadyen* matter has already been assigned to a
18 complex department in San Bernardino, several defendants are located in that jurisdiction, and the
19 original complaint was filed there by more plaintiffs.

20 **III. ARGUMENT**

21 When civil actions sharing a common question of fact or law are pending before different
22 courts, a petition for coordination may be submitted to the Chairperson of the Judicial Council
23 "... by any party to one of the actions after requesting permission from the presiding judge."
24 (Code Civ. Proc., §404.) The Hon. Gregory H. Lewis granted Petitioners permission to request
25 coordination of these two identical matters from this Council. (Brady Decl., ¶3, Exhibit B.)

26 ³ While *Cardenas* remains stayed pending resolution of this petition, the stay in *McFadyen*
27 ended on January 25, 2021. (Brady Decl., ¶5, Exhibit D.) Petitioners intend to request that the
28 *McFadyen* court reinstate the stay at the upcoming February 10, 2021 case management
conference.

1 Coordination is proper where (1) the cases to be coordinated are all complex as defined by
2 California Rules of Court 3.400; and (2) the requirements for coordination in California Code of
3 Civil Procedure §404.1 are met. (Code Civ. Proc., §404.) As explained below, and as found by the
4 Hon. Gregory H. Lewis these identical cases meet both the definition of “complex” and the
5 requirements of California Code of Civil Procedure §404.1.

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

7 The plaintiffs in *McFadyen* designated that matter as complex on their civil case cover
8 sheet but the plaintiff in the *Cardenas* matter did not. (Brady Decl., ¶3.) However, plaintiff in the
9 *Cardenas* matter has since acknowledged the matter is indeed complex. (Brady Decl., ¶12,
10 Exhibit F.) Regardless, plaintiffs do not choose whether or not a matter is complex, the Court
11 does. California Rule of Court 3.400(b) sets forth the criteria for that determination:

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

21 This is a factor test with disjunctive factors, and a case may be considered complex even if
22 it only satisfies one of the listed criteria. For example, a case may be found to be complex “only
23 because of the large number of represented parties in related actions pending in different
24 counties.” (*Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 835, fn. 8.) Here, Petitioners
25 can meet most of the factors. Both matters will involve time-consuming motions which raise
26 difficult legal issues, given that multiple defendants intend to file demurrers and/or anti-SLAPP
27 motions. (Brady Decl., ¶9.) If those filings are unsuccessful, there will certainly be a large
28 number of witnesses and evidence to sort through, given the large number of plaintiffs (16) in the
McFadyen matter and the large number of defendants (13) in both matters. Similarly, both matters
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

1 counsel to date. (*Ibid.*) Finally, the actions are of course likely to involve coordination with
2 related actions in other counties, which is the very reason Petitioners bring this petition. Any one
3 of these alone is sufficient to find the cases complex, jointly they all but compel such finding.
4 Indeed, in his order permitting the filing of this petition, Judge Lewis found the matter to be
5 complex. (Brady Decl., ¶3, Exhibit B.)

6 * * * *

7 For these reasons, the *Cardenas* and *McFadyen* matters should be deemed complex and
8 thus eligible for coordination.

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

10 CCP §404.1 provides that coordination of civil actions sharing a common question of fact
11 or law is proper if it will “promote the ends of justice” based on the following factors: “whether
12 the common question of fact or law is predominating and significant to the litigation; the
13 convenience of parties, witnesses, and counsel; the relative development of the actions and the
14 work product of counsel; the efficient utilization of judicial facilities and manpower; the calendar
15 of the courts; the disadvantages of duplicative and inconsistent rulings, orders, or judgments; and,
16 the likelihood of settlement of the actions without further litigation should coordination be
17 denied.” (Code Civ. Proc., §404.1.) Here, consideration of these factors easily supports
18 coordination of these two matters.

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

20 There is no question that common questions of law and fact predominate in both the
21 *McFadyen* and *Cardenas* actions. The complaints are effectively identical, share the exact same
22 causes of action, involve the same incident, and were filed on the same day. (Brady Decl., ¶2 and
23 ¶4.) In some places, counsel in the *Cardenas* action even forgot to change the plural tense of the
24 original *McFadyen* complaint to the singular to reflect that there is only one Plaintiff in the
25 *Cardenas* action. (*Cardenas* Complaint, 34:4 [“PLAINTIFF are informed and believe and thereon
26 allege...”]; *See also*: 10:14-16, 28:21, 31:11-12.)

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

28 It is also clear that coordination is an efficient use of judicial resources and will advance

1 the convenience of the parties, witnesses, counsel, and the court system. Given that identical
2 allegations and claims against the same defendants are to be litigated, and given the number of
3 plaintiffs and defendants cumulatively involved in the matters, the resources of multiple judicial
4 chambers will be taxed needlessly by duplications of the same or similar motions, hearings, and
5 trials. Further, as both actions arise from the same event, they will no doubt involve the same
6 witnesses, which witnesses should not have to present the same testimony in two different venues.
7 The convenience of the parties will no doubt be served by the coordination of written discovery
8 demands and depositions of both lay and expert witnesses, as well as the creation of a common
9 repository of relevant documents, should this matter reach that stage.

10 **3. The relative development of the actions.**

11 While a petition for coordination may be made at any time after the filing of a complaint
12 (Cal. Rule Ct. 3.521(a)), coordination is particularly appropriate at earlier stages, before costs
13 have been sunk into each matter, or various motions filed, or differing rulings made. Here,
14 complaints have been filed in both actions, but otherwise, there has been no significant progress
15 in either case. No defendant has yet filed a responsive pleading in either action. Nor has any party
16 commenced discovery. It is in the interest of all parties to have coordination determined now,
17 before either case significantly progresses.

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

20 Judicial facilities and resources will be more efficiently utilized if the cases are
21 coordinated because there will be a single judge in a single courtroom hearing the large volume of
22 pretrial motions anticipated in this case, rather than multiple pretrial motions being heard in
23 different courthouses utilizing countless judge and staff hours. That duplicative burden would be
24 only exacerbated should trial be necessary here. In sum, allowing both actions to proceed in two
25 separate courts is an unnecessary burden on judicial resources, especially when the actions are
26 largely identical except for the identity of the plaintiffs involved.

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28 ///

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

3 The *Cardenas* and *McFadyen* matters have identical causes of action, so there is no doubt
4 a very real danger of duplicative or inconsistent rulings, orders, or judgments if the cases are not
5 coordinated. Cases this complex are also likely to involve numerous motions with the attendant
6 risk of inconsistent rulings. These motions should be resolved in the same trial court to avoid
7 inconsistencies so that they are subject to review in the same Court of Appeal. That applies to any
8 other rulings, orders, or judgments reached in either matter. Coordination avoids that potential.

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

11 If coordination is denied, and the two matters continue to proceed on separate tracks,
12 settlement only becomes less attractive to Petitioners (and likely all defendants involved in these
13 two matters), as it makes a single global settlement less likely because the potential liability they
14 face in the other, separate action will remain unknown.

15 * * * *

16 As established above, all of the factors in §404.1 can be met, and the two actions should
17 therefor be coordinated.

18 **C. San Bernardino County is the Appropriate Venue for the Coordinated**
19 **Proceedings.**

20 Should this petition be granted, it is Petitioners' view, which is shared by most other
21 defendants, that San Bernardino County Superior Court is the appropriate venue for the
22 coordinated proceedings. (Brady Decl., ¶ 11.) Plaintiffs, however, do not share that view and have
23 requested that the coordinated matter be assigned to Orange County. (Brady Decl., ¶ 13.)
24 Petitioners cannot address the merits of their request because Plaintiffs have not provided an
25 explanation for their preference. (Brady Decl., ¶ 13.) Petitioners believe that San Bernardino
26 County is the better venue for several reasons. First, *McFadyen* has already been assigned to a
27 judge in San Bernardino County Superior Court's Complex Civil Department, while *Cardenas* is
28 not currently in Orange County Superior Court's complex department because the plaintiff did not

1 designate the matter as complex. (Brady Decl., ¶¶ 14-15.) Second, there are seventeen (17)
2 plaintiffs in *McFadyen* who chose to file their action in San Bernardino, as opposed to a single
3 plaintiff in *Cardenas* who chose to file his action in Orange County. (Brady Decl., ¶¶ 2-3.) Third,
4 while both actions were filed on the same day, the complaint in *Cardenas* was obviously a copy of
5 the *McFadyen* complaint, meaning San Bernardino County was the original venue. (*See* Brady
6 Decl., ¶¶ 2-3, Exhibits A and B.) Finally, of the California-based defendants, there are an equal
7 number located in San Bernardino County (3) as in Orange County (3) and each of the San
8 Bernardino County-based defendants, as well as two of the Orange County-based defendants (the
9 third has not responded to take a position), agree that San Bernardino County is the better venue
10 for the reasons above. (Brady Decl., ¶¶ 10-11.)

11 **IV. CONCLUSION**

12 For the above reasons, Petitioners respectfully request that the *Cardenas* and *McFadyen*
13 matters be designated as complex, coordinated and assigned to San Bernardino County Superior
14 Court, and stayed until the coordination process has been completed.

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16 Dated: February 5, 2021

MICHEL & ASSOCIATES, P.C.

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18 _____
19 Sean A. Brady
20 Attorney for Petitioners
21 Ghost Firearms, LLC, Thunder Guns, LLC,
22 Ryan Beezley and Bob Beezley,
23 and MFY Technical Solutions, LLC
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