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14 JUDICIAL COUNCIL OF CALIFORNIA
15 CHAIR OF THE JUDICIAL COUNCIL

16 FRANCISCO GUDINO CARDENAS,

17 Plaintiff,

18 v.

19 GHOST GUNNER INC., d/b/a
20 ghostgunner.net, et al., *et al.*,

21 Defendants.

22 TROY MCFADYEN, et al.,

23 Plaintiff,

24 v.

25 GHOST GUNNER INC., d/b/a
26 ghostgunner.net, et al., *et al.*,

27 Defendants.
28

Judicial Council Coordination Proceeding

JCCP NO. 5167

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

San Bernardino Superior Court
Case No. DS 1935422

**PLAINTIFF CARDENAS' AND
MCFADYEN'S RESPONSE IN SUPPORT
OF PETITION FOR COORDINATION
BUT PROPOSING COORDINATION IN
ORANGE OR SACRAMENTO
COUNTIES**

1 **I. INTRODUCTION**

2 The Defendants (each is a manufacturer and/or distributor of so-called “ghost gun kits”)
3 in *Cardenas v. Ghost Gunner, Inc. dba Ghostgunner.net, et al.*, Case No. 30-2019-0111797-CU-
4 PO-CJC (Orange County) and *McFayden et al. v. Ghost Gunner, Inc. dba Ghostgunner.net*, Case
5 No. DS 1935422 (San Bernardino County)¹ filed a Petition for Coordination (the “Coordination
6 Petition”) on February 5, 2021 to coordinate two cases arising out of a single mass shooting that
7 had each been pending for nearly a year. Defendants have misleadingly requested consolidation
8 in San Bernardino County Superior Court after initially seeking and receiving Plaintiffs’
9 agreement to consent to consolidate the matters in Orange County Superior Court. Plaintiffs
10 never agreed to pursue consolidation in San Bernardino because, inter alia, that court is not
11 proximate to the majority of witnesses, parties, or evidence. Accordingly, pursuant to California
12 Rule of Court 3.562, each Plaintiff in the *Cardenas* and *McFayden* cases (“collectively, the
13 “Plaintiffs”) makes this submission in support of coordination of the two respective cases in
14 either Orange County Superior Court or Sacramento County Superior Court.

15 Proceedings should be coordinated in the court that is most convenient to the majority of
16 witnesses and parties and that has the resources to manage litigation of this magnitude and
17 complexity. The *Cardenas* and *McFayden* cases should be consolidated in Orange County, a
18 large Superior Court with ample resources to manage this complex consolidated litigation
19 involving more than 30 parties and where the majority of witnesses and parties reside.
20 Defendants originally requested that the cases be coordinated in Orange County Superior Court
21 only to unilaterally reverse course and seek consolidation in San Bernardino without ever
22 seeking Plaintiffs’ input or consent on that change. Plaintiffs do not agree that consolidation in

23 ¹ The defendants in the *Cardenas* and *McFayden* cases are identical: Ghost Gunner Inc.,
24 d/b/a ghostgunner.net; Defense Distributed d/b/a ghostgunner.net; Cody Wilson d/b/a
25 ghostgunner.net; Blackhawk Manufacturing Group Inc., d/b/a 80percentarms.com; Ryan Beezley
26 and Bob Beezley, d/b/a rbtacticaltooling.com; Ghost America LLC, d/b/a ghostguns.com; Ghost
27 Firearms LLC, d/b/a Grid Defense and ghostrifles.com; Juggernaut Tactical Inc., d/b/a
28 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;
Thunderguns LLC, d/b/a thundertactical.com; and Polymer80, Inc.

1 San Bernardino is appropriate, but if consolidation is not deemed appropriate in Orange County,
2 would alternatively seek consolidation in Sacramento County Superior Court as the next most
3 appropriate forum for the consolidated litigation.

4 The Defendants recognized the appropriateness of consolidation in Orange County from
5 the outset of the consolidation proceedings. To wit, Defendants themselves initially moved the
6 Orange County Superior Court in *Cardenas* to “transfer[] the McFadyen action *to the Orange*
7 *County Superior Court* and consolidat[e] it with the instant action.” *See* 10/28/2020 Defendants’
8 Coordination Petition, at 10:5-6 (emphasis added). Defendants argued in that request that
9 “Orange County is the appropriate venue because that is where most of the California-based
10 defendants are located.” *Id.* at 8:28 – 9:2; *see also* 10/28/2020 Decl. of Defense Counsel Sean
11 Brady in Support of Petition for Coordination of Actions at ¶ 11.

12 Plaintiffs agreed and filed their notice of non-opposition to Defendants’ request seeking
13 coordination in Orange County. 11/19/2020 Plaintiff’s Non-Opposition of Defendants’
14 Coordination Petition. Having secured Plaintiffs’ non-opposition to consolidation in Orange
15 County, Defendants have now changed course and are requesting consolidation in *San*
16 *Bernardino County Superior Court*, that is, literally requesting that this Council do the opposite
17 of what Defendants had requested in their original petition and send the Orange County case to
18 San Bernardino rather than sending the San Bernardino case to Orange County. Notably,
19 counsel for Defendants never reached out to counsel of Plaintiffs to announce or explain its
20 about face, it simply filed its papers with this Council as if nothing had changed (risking the
21 implication that Plaintiffs agreed with consolidation in San Bernardino since they had filed a
22 statement of non-opposition in response to Defendants’ original petition for consolidation in
23 Orange County).

24 Both the *Cardenas* and *McFayden* matters have been assigned to the respective complex
25 divisions in the Orange County and San Bernardino County cases—another fact Defendants elide
26 in highlighting only the *McFayden* complex assignment in its filing with this Council. *See*
27 10/28/2020 Defendants’ Coordination Petition at 6:6.

28 The Defendants originally sought to have the *Cardenas* and *McFayden* cases

1 consolidated in Orange County and the Plaintiffs agreed. In seeking consolidation in Orange
2 County, Defendants conceded that the majority of the California-based defendants are based in
3 that county and not in San Bernardino. The cases should be consolidated in Orange County, as
4 all parties originally agreed, or, in the alternative, be consolidated in Sacramento County, which
5 can provide a neutral forum with all of the necessary resources for managing complex
6 consolidated cases.

7 **II. FACTUAL AND PROCEDURAL BACKGROUND**

8 Plaintiffs, the families of loved ones who were wounded and killed in a tragic shooting
9 rampage in California in November 2017, filed their complaints on November 14, 2019. To
10 date, Plaintiffs have named fourteen defendants in these lawsuits, each of which makes the same
11 kind of ghost gun kits used by the perpetrators of the mass shootings at the heart of the *Cardenas*
12 and *McFayden* cases. Each defendant has been served with the summons and complaint in both
13 matters, and the courts in both matters have stayed proceedings in both matters until coordination
14 is finalized.

15 **III. COORDINATION IS APPROPRIATE**

16 The parties agree that the *Cardenas* and *McFayden* cases meet the requirements for
17 consolidation set forth in Section 404.1 of the California Code of Civil Procedure. In addition to
18 having the same fourteen individual defendants, the cases share numerous common questions of
19 law and fact, including having arisen out of the same incident, stating the same causes of action,
20 and alleging the same facts about the ghost gun industry. Coordination to a single Superior
21 Court will be convenient for the plaintiffs, defendants, witnesses, and respective counsel alike.
22 Consolidation will also provide for a more efficient use of judicial resources, avoid duplicative
23 rulings, and prevent inconsistent rulings. Thus, the petition for coordination should be granted as
24 coordination of the cases “will promote the ends of justice.” Cal. Civ. Proc. Code § 404.1.

25 **IV. COORDINATION IN ORANGE COUNTY BEST SERVES THE INTERESTS 26 OF JUSTICE**

27 The appropriate coordination site is the one that is most convenient for the majority of
28 witnesses and parties, and that possesses the resources to handle the volume and complexity of

1 the litigation at hand.² Cal. Rule of Court 3.530. Defendants originally agreed that Orange
2 County Superior Court was the best venue for coordination of the *Cardenas* and *McFayden* cases
3 because the “two matters are essential the same and likely complex” and Orange County “is
4 where most of the California-based defendants are located.” 10/28/2020 Defendants’
5 Coordination Petition, at 3:9-10, 10:5-6. The Plaintiffs from both *Cardenas* and *McFayden*
6 agreed with Defendants and thus filed a Statement of Non-Opposition. 11/19/2020 Plaintiff’s
7 Non-Opposition of Defendants’ Coordination Petition.

8 Having succeeded in having its petition sent to this Council, Defendants changed course
9 with no warning and now argue that San Bernardino would be the superior venue of choice for
10 consolidation because seventeen plaintiffs in *McFadyen* chose to file their action there.
11 10/28/2020 Defendants’ Coordination Petition, at 5:16-20. Of course, the venue where the
12 *McFayden* case was originally filed was based on a number of factors – many of which are not at
13 issue on this request – and the fact is that *every* Plaintiff is now in agreement that Orange County
14 is both the more convenient and preferred venue for consolidation. Moreover, Orange County is
15 just as close (if not closer) to the evidence, witnesses, and parties in the two cases as is San
16 Bernardino County. And, again, Defendants themselves originally sought to coordinate in
17 Orange County, arguing that most of the California-based Defendants were located in Orange
18 County. 10/28/2020 Defendants’ Coordination Petition. All of these reasons still favor
19 coordination in Orange County.

20 **V. Alternatively, Consolidation in Sacramento County Superior Court Serves the**
21 **Interests of Justice**

22 Alternatively, Plaintiffs request that proceedings be coordinated in Sacramento County.
23 Sacramento County is centrally located in the State and is readily accessible by air, train, or car.³

24 ² Under Rule 3.530, in granting a petition for coordination, the coordination motion judge
25 shall recommend a site for the coordination proceedings, considering “any relevant factors”,
26 including “[t]he efficient use of court facilities and judicial resources”, “[t]he locations of
27 witnesses and evidence”, “[t]he convenience of the parties and witnesses” and “[t]he ease of
travel to and availability of accommodations in particular locations.” Cal. Rule of Court 3.530.

28 ³ Visit Sacramento, *Getting Here*, WWW.VISITSACRAMENTO.COM,
<https://www.visitsacramento.com/plan/maps-and-transportation/getting->

1 There are ample hotels and resources to support trial and hosting over 30 parties.⁴ Sacramento
2 County Superior Court has a complex division and thus could manage a complex set of cases
3 such as *Cardenas* and *McFayden*.⁵

4 **A. “The efficient use of court facilities and judicial resources” weighs in**
5 **favor of coordination in Orange County**

6 Considering the size of this litigation, the number of out of state parties privy to it, and
7 the potentially burdensome strain that coordination of these matters can have on relatively
8 smaller counties like San Bernardino, Sacramento County serves as the best alternative venue to
9 Orange County. Under Rule 3.530(b)(3), consideration of the efficient use of court facilities and
10 judicial resources must be had. Courts in Sacramento have the experience and resources
11 necessary to handle coordination, but Sacramento County also has a designated complex
12 litigation department that routinely handles claims involving multiple defendants. Moreover,
13 there is no question that Sacramento, the state capital, has the judicial resources to handle
14 coordination of these suits.

15 **B. The locations of witnesses and evidence also supports coordination in**
16 **Sacramento County**

17 Pursuant to Rule 3.530(b)(4), the Council should consider the location of witnesses and
18 evidence in selecting a venue. Sacramento County is hundreds of miles closer than San
19 Bernardino County to the site of the underlying mass shooting event in this case, which occurred
20 in Tehama County. As a result, most of the witnesses and physical evidence are located in
21 Tehama County and not Orange County or San Bernardino County, where the two cases were
22 filed. Coordination in Sacramento will allow for relatively the same access to physical and

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here/?view=list&sort=qualityScore (last visited Apr. 26, 2011).

25 ⁴ Visit Sacramento, *Hotels*, [www.VISITSACRAMENTO.COM](http://www.visitsacramento.com/hotels/?view=list&sort=qualityScore),
26 <https://www.visitsacramento.com/hotels/?view=list&sort=qualityScore> (last visited Apr. 26,
2011).

27 ⁵ Superior Court of California County of Sacramento, *Civil*, [WWW.SACCOURT.CA.GOV](http://www.saccourt.ca.gov),
28 <https://www.saccourt.ca.gov/civil/civil.aspx> (last visited Apr. 26, 2011).

documentary evidence as would coordination in Orange or San Bernardino Counties. As a result, Sacramento County is just as convenient as the home court to either case.

C. The convenience of the parties, witnesses, and counsel as well as ease of travel all favor coordination in Sacramento County

Although most of the Rule 3.530 factors concern location and convenience, Defendants' request for coordination in San Bernardino County is made without materially addressing any of these issues. Here, the location and convenience factors identified in Rule 3.530(b)(5) (location of the parties and witnesses), (b)(7) (the location of counsel), and (b)(8) (ease of travel and accommodations) decisively favor Orange County (as discussed *supra*) or Sacramento County—not San Bernardino. Lead counsel for the Plaintiffs are based in Redding, Menlo Park, and San Francisco, making Sacramento County the most mutually convenient location to counsel collectively. Most of the evidence is in Northern California in Tehama County (where the shootings occurred), while the parties are primarily located in southern California (perhaps dictating in favor of Orange County). Sacramento County is equally convenient to parties who must travel from their home counties or out-of-state and is closer to Tehama County than are either Orange or San Bernardino Counties.

Sacramento County (like Orange County) is an accessible option to individuals traveling from out-of-state due to having an international airport as well as easy rail and car travel accessibility options. While not being too far removed from the Southern California counties, and remaining close to the location of the physical and documentary evidence. The difference in travel time is substantial. For the parties, counsel, evidence, and witnesses near Tehama, driving to Sacramento is far simpler than flying to Southern California.

The difference in cost to out-of-town parties, witnesses, and counsel is also significant. Parties and witnesses traveling to San Bernardino also will need to navigate Los Angeles traffic, deal with parking, and cover other costs that are not present in Sacramento or Orange County. Sacramento and Orange County also each have large, international airports with far more affordable flights than flying into San Bernardino's regional airport. Flights will also be much

1 more accessible to out-of-town parties in which direct flights to San Bernardino will likely be
2 non-existent and/or costly.

3 Thus, the location and convenience factors, which make up the bulk of Rule 3.530,
4 strongly favor Sacramento over San Bernardino.

5 **V. CONCLUSION**

6 For the foregoing reasons, Plaintiffs respectfully request that the Judicial Council
7 coordinate these actions to Orange County as Defendants first requested and Plaintiffs agreed, or,
8 in the alternative, in Sacramento County where coordination would be most favorable under Rule
9 3.530.

10 Dated: April 26, 2021

AMY K. VAN ZANT
ANNA SABER
SHAYAN SAID
ORRICK, HERRINGTON & SUTCLIFFE LLP

14 By: /s/ Amy K. Van Zant
15 AMY K. VAN ZANT
16 Attorneys for Plaintiff
17 Francisco Gudino Cardenas
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1 PROOF OF SERVICE

2 I am employed in the County of Los Angeles, State of California. I am over the age of eighteen
3 years old and not a party to this action. My business address is Orrick, Herrington & Sutcliffe
4 LLP, 777 South Figueroa Street, Suite 3200, Los Angeles, CA 90017.

5 On April 26, 2021, I served the following document(s) entitled:

6 **PLAINTIFF CARDENAS' AND MCFADYEN'S RESPONSE**
7 **IN SUPPORT OF PETITION FOR COORDINATION BUT**
8 **PROPOSING COORDINATION IN ORANGE OR**
9 **SACRAMENTO COUNTIES**

on all interested parties to this action in the manner described as follows:

10 X	(VIA EMAIL) I caused to be transmitted via electronic mail the document(s) listed above to the electronic address(es) set forth below.
11 X	(VIA U.S. MAIL) By placing the document(s) listed above in a sealed envelope with 12 postage thereon fully prepaid, in the United States mail at Menlo Park, California addressed as set forth below.

13 **By Email:**

14
15 C.D. Michel
(cmichel@michellawyers.com)
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21 Attorneys for Defendants
Ghost Firearms, LLC, Thunder Guns, LLC,
22 Ryan Beezley and Bob Beezley,
and MFY Technical Solutions, LLC
23

By U.S. Mail:

CHAIR, JUDICIAL COUNCIL OF
CALIFORNIA
ATTN: APPELLATE COURT
SERVICES (CIVIL CASE
COORDINATION)
455 GOLDEN GATE AVE. 5TH
FLOOR
SAN FRANCISCO, CA. 94102-2688

24 I declare under penalty of perjury under the laws of the State of California that the above is true
25 and correct.

26 Executed on April 26, 2021 at Los Angeles, California.

27 /s/ Nicole Payne
Nicole Payne