

1 CIVDS1935422. It appears undisputed that *McFayden* is pending before a
2 complex department in San Bernardino.

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4 2. *Cardenas v. Ghost Gunner Inc., et al.*, OCSC No. 19-01111797. *Cardenas* is
5 pending before Judge Lewis in Department C26, but he has designated the
6 case complex and stayed proceedings to permit the filing of this
7 coordination petition. (Brady Decl. (ROA 5), Ex. C.) As a result of the stay,
8 while *Cardenas* has been designated complex, it has not yet been
9 transferred to a complex department by the Presiding Judge.

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11 **I. Background**

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13 **A. Factual Allegations**

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15 The Included Actions, whose complaints are nearly word-for-word identical
16 except for details about the plaintiffs, arise from a shooting spree that took place
17 in Tehama County on November 13 and 14, 2017. During this spree, Kevin Neal
18 shot numerous victims, some of whom died, and others of whom were injured.
19 The plaintiffs in the Included Actions are among Neal's surviving victims and the
20 survivors of those he killed.

21
22 The Included Actions are less about the shootings themselves than the
23 weapons used by Neal. Plaintiffs allege that defendants manufacture and
24 distribute kits and firearms parts that can easily be assembled by a buyer into a
25 fully functioning firearm. Because defendants do not actually manufacture or
26 distribute *firearms*, only *firearms parts or kits*, purchasers do not need to pass
27 background checks or interact with a federal firearms licensee ("FFL," i.e., a
28 federally authorized gun dealer). Moreover, because defendants only distribute

1 parts or kits, the weapons that buyers eventually assemble do not have traceable
2 serial numbers unless specifically required by state law. The guns so assembled
3 are therefore called “ghost guns.”
4

5 Defendants’ parts and kits allegedly include materials that could be used to
6 assemble a fully functional AR-15 style “ghost gun.” Plaintiffs allege that Neal
7 used at least two AR-15 style “ghost guns” in his shooting spree, but because they
8 lacked serial numbers, it is impossible to tell who manufactured the parts.
9 Accordingly, plaintiffs bring suit against a number of “ghost gun” manufacturers
10 and distributors. Plaintiffs further allege that AR-15 style rifles are illegal to
11 possess in California, that defendants take no steps to prevent the sale of their AR-
12 15 firearms parts/kits to California residents, and that Neal could not possibly have
13 acquired an AR-15 style rifle legally from a California FFL. Based on these
14 allegations, plaintiffs bring claims for negligence, nuisance and UCL violations.
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16 **B. Procedural History**
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18 *Cardenas* and *McFayden* were both filed on the same day. (See Brady Decl.
19 (ROA 5), Exs. A-B [both file stamped 11/14/19].) *McFayden* was presumably the
20 first-filed case, because the complaint in *Cardenas* specifically notes *McFayden* as
21 a related case. (*Id.*, Ex. A, ¶ 18.) No responsive pleadings have been filed in either
22 case. (*Id.*, ¶ 16.) Some defendants have not yet been served with process. (*Id.*, ¶
23 9(a).)
24

25 *McFayden* was assigned to a complex department in San Bernardino
26 County. (*Id.*, ¶ 14.) *Cardenas* did not designate his case complex in his cover
27 sheet, so his case was originally assigned to general civil. (*Id.*, ¶ 15.) In October
28 2020, Petitioners filed a motion in *Cardenas* to either (1) designate the case

1 complex and permit the filing of a coordination petition or (2) keep the case in
2 general civil and order *McFayden* transferred to Orange County to be consolidated
3 with *Cardenas*. (Rosenfeld Decl. (included in ROA 8), Ex. 1. Because only non-
4 complex matters can be consolidated, this relief would have the effect of finding
5 *McFayden* was not complex.) The plaintiffs in both *Cardenas* and *McFayden* filed
6 non-oppositions asking the courts to transfer *McFayden* to Orange County to be
7 consolidated with *Cardenas*. (*Id.*, Ex. 2.)

8
9 Judge Lewis chose the first alternative. He designated *Cardenas* complex
10 and allowed the filing of a coordination petition, then stayed proceedings pending
11 the outcome of the planned petition. (Brady Decl., Ex. C.) Again, because
12 *Cardenas* is stayed, it has been designated complex but not yet transferred to a
13 complex department.

14
15 Petitioners then filed the present petition for coordination, seeking
16 coordination in San Bernardino County rather than Orange County.

17 18 **II. Propriety of Coordination**

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20 All parties agree coordination is proper. Upon its own review of the papers,
21 the Court agrees that coordination is proper under the factors listed in CCP §
22 404.1.

23 24 **III. Location of Coordinated Proceedings**

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26 The parties disagree on where coordinated proceedings should take place.
27 Petitioners, and the defendants they have been able to contact, favor San
28 Bernardino County. Plaintiffs favor Orange County. In addition, the *McFayden*

1 plaintiffs propose Sacramento County as an alternate site for coordinated
2 proceedings, as Sacramento County is comparatively convenient to Tehama
3 County and has a dedicated complex litigation program judge.

4
5 In determining the location for coordinated proceedings, the following
6 factors are to be considered (CRC 3.530(b)):

- 7
8 1. The number of included actions in particular locations;
9 2. Whether the litigation is at an advanced stage in a particular court;
10 3. The efficient use of court facilities and judicial resources;
11 4. The locations of witnesses and evidence;
12 5. The convenience of the parties and witnesses;
13 6. The parties' principal places of business;
14 7. The office locations of counsel for the parties; and
15 8. The ease of travel to and availability of accommodations in particular
16 locations.

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18 **A. Number of Included Actions**

19
20 As between Orange and San Bernardino Counties, this factor is a wash.
21 Because no action is pending in Sacramento County, it cuts against that venue.

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23 **B. Advanced Stage of Litigation; Efficient Use of Court Resources**

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25 Petitioners mention this factor in reply. They note that the court in
26 *McFayden* has already held two case management conferences, so the judge is
27 more familiar with the case than the yet-to-be-assigned complex judge in
28 *Cardenas* will be. According to Petitioners, if the coordinated proceedings go

1 forward in Orange County, everything would have to “start from scratch.” (Reply
2 (ROA 9), p. 4.)

3
4 The Court is not persuaded by this argument. While it indeed appears no
5 case management conference has been held in *Cardenas*, responsive pleadings
6 have yet to be filed in either case. No court has a deep familiarity with the facts
7 and law that would come from lengthy supervision of a case.

8
9 Furthermore, this argument appears to contradict the relief sought from
10 Judge Lewis. If things had progressed so far in *McFayden* that the parties would
11 be prejudiced by having to start from scratch in Orange County, why would
12 Petitioners make an alternate request for consolidation in Orange County? Why
13 not have *Cardenas* transferred to San Bernardino County?

14
15 The Court finds this factor of little relevance. The two cases are in such
16 early stages that even sending them to Sacramento County would cause little (if
17 any) delay or waste of court resources.

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19 **C. Location and Convenience of Parties, Witnesses, and Evidence**

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21 As to the defendants, these factors favor either Orange County or San
22 Bernardino County. The in-state defendants have their principal places of business
23 in those counties, meaning witnesses and documents pertinent to business
24 operations are most likely located in those counties. (The out-of-state defendants
25 will be inconvenienced no matter what.)

26
27 As to the plaintiffs, these factors favor Sacramento County. In terms of the
28 in-state plaintiffs (again, the out-of-state plaintiffs will be inconvenienced no

1 matter what), only Cardenas and potentially witnesses related to him are in
2 Southern California. Otherwise, fact witnesses and evidence relating to the
3 shooting itself (including treating physicians) are most likely to be located in and
4 around Tehama County. Tehama County, however, does not appear to have a
5 complex division. The *McFayden* plaintiffs present Sacramento County as the
6 next-best location.

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8 On this record, the Court would ordinarily conclude these factors do not tip
9 one way or the other. Sacramento County is nearer witnesses and evidence
10 relating to the shooting itself, while Orange and San Bernardino Counties are
11 nearer to witnesses and evidence relating to the in-state defendants' operations.
12 But all Plaintiffs agree Orange County would be convenient, and Petitioners
13 represented to Judge Lewis that Orange County would be an appropriate location
14 for future consolidated proceedings. Based on these representations, the Court
15 finds the parties agree Orange County would be the most convenient for the
16 parties, the witnesses and the evidence. The Court is not persuaded by
17 Petitioners' attempt to draw a distinction between "consolidation is proper in
18 Orange County" and "coordination is proper in San Bernardino County."

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20 **D. Location of Counsel**

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22 It appears that Plaintiffs' counsel, with the exception of attorney Singleton,
23 are based in Northern California, making Sacramento County more convenient for
24 them. Most Defendants' counsel appear to be based in Southern California. (The
25 exceptions are one firm based in Walnut Creek and one in White Plains, New
26 York.) Orange or San Bernardino Counties would be more convenient for them.
27 The Court finds this factor does not lean toward any particular venue.

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E. Ease of Travel and Availability of Accommodations

All three counties have major airports: Santa Ana, Ontario and Sacramento. Plaintiffs point out, however, that San Bernardino County has less hotel accommodations available near the courthouse. The Court finds this factor cuts slightly against San Bernardino County.

IV. Conclusion

Taking the above into account, the Court orders that the Included Actions will be coordinated, and that the location of coordinated proceedings will be the Orange County Superior Court. The Court of Appeal, Fourth District, Division Three will serve as the reviewing court.

Dated: 5-7-21

William D. Cluster

Judge William D. Cluster
Coordination Motion Judge

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Civil Complex Center
751 W. Santa Ana Blvd
Santa Ana, CA 92701


SHORT TITLE: Ghost Gunner Firearms Cases

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CASE NUMBER:
JCCP 5167

I certify that I am not a party to this cause. I certify that a true copy of the above Order - Other dated 05/07/21 has been placed for collection and mailing so as to cause it to be mailed in a sealed envelope with postage fully prepaid pursuant to standard court practice and addressed as indicated below. This certification occurred at Santa Ana, California on 5/7/21. Following standard court practice the mailing will occur at Sacramento, California on 5/10/21.

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455 GOLDEN GATE AVE, 5TH FLOOR
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Clerk of the Court, by:  , Deputy

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