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8 TACTICAL GEAR HEADS LLC

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF ORANGE, CIVIL COMPLEX CENTER

11 Hon. William D. Claster, Coordination Trial Judge

12 Coordination Proceeding Special)
Title (Rule 3.550)) JUDICIAL COUNCIL COORDINATION
13) PROCEEDING NO. 5167
14 GHOST GUNNER FIREARMS CASES)
SUPERIOR COURT OF CALIFORNIA
15 Included actions:) COUNTY OF ORANGE
CASE NO. 30-2019-01111797
16 Cardenas v. Ghost Gunner, Inc. dba)
GhoseGunner.net, et al.) SUPERIOR COURT OF CALIFORNIA
17) COUNTY OF SAN BERNARDINO
CASE NO. CIVDS193452
18)
19 McFadyen, et al. v. Ghost Gunner, Inc. dba) **DEFENDANTS' PRELIMINARY TRIAL**
GhostGunner.net, et al.) **CONFERENCE MEMORANDUM**
20)
21) Date: August 13, 2021
Time: 1:30 p.m.
Dept.: CX104

22
23 Pursuant to this Court's Order Setting Preliminary Trial Conference of July 6, 2021, the
24 below Defendants hereby submit the following memorandum:

25 These two coordinated wrongful death and personal injury actions arise out of a series of
26 shootings that occurred in Rancho Tehama Reserve, an unincorporated community in Tehama
27 County, on November 13-14, 2017. During his deadly rampage, 44-year old Kevin Janson Neal

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GHOST GUNNER FIREARMS CASES, Judicial Council Coordination Proceeding No. 5167
DEFENDANTS' PRELIMINARY TRIAL CONFERENCE MEMORANDUM

1 shot and killed 5 people and injured 18 others at 8 separate crime scenes, including an
2 elementary school. Neal died by suicide shortly before being apprehended by local law
3 enforcement officers.

4 Neal reportedly used several firearms and at least one semi-automatic rifle during the
5 shootings. Plaintiffs allege the involved semi-automatic rifle was assembled using a variety of
6 readily available component parts, along with a lower receiver component of unknown origin. It
7 is further alleged that this lower receiver was originally obtained by Neal or others as an
8 unfinished receiver – or “receiver blank” – which was then machined further to become an
9 operable lower receiver incorporated into a functioning firearm. Plaintiffs further allege Neal’s
10 rifle was not marked with a serial number or other identifying information suggesting the lower
11 receiver had been completed by Neal, a felon and prohibited individual, or someone else who
12 was not a Federal Firearms Licensee.

13 Plaintiffs’ claims, an assemblage of theories including negligence, negligent entrustment,
14 public nuisance, and the alleged violation of several consumer protection statutes (Bus. & Prof.
15 Code §§ 17200/17500), seek to hold the manufacturers, distributors and retailers of unfinished
16 lower receivers – which were legal to manufacture and sell pursuant to Bureau of Alcohol
17 Tobacco and Firearms guidance – for the carnage wrought by Neal. Moreover, Plaintiffs are
18 asserting a market-share liability theory which is based on the assumption Defendants’ products
19 are fungible. However, because their products are demonstrably not fungible, this theory fails as
20 a matter of law. Finally, Defendants vigorously deny any and all liability for the criminal
21 conduct of Neal and the damages he, and he alone, caused Plaintiffs herein.

22 1. Appointment of Liaison Counsel for Defendants:

23 The following counsel has/have consented to serve as Defendants’ Liaison Counsel:

24 Sean A. Brady, counsel for MFY Technical Solutions, LLC, Blackhawk Manufacturing
25 Group, Inc., Ryan Beezley, Bob Beezley, Thunder Guns, LLC and Ghost Firearms, LLC.

26 2. Timetable for Filing Non-Discovery Motions:

27 Given the issues raised in the operative Complaints, Defendants believe these cases are
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1 suitable for resolution at the demurrer/motion to strike stage. However, as referenced below in
2 Para. 8, there is a related case currently pending in Sacramento Superior Court which raises
3 common issues of fact and law (*Kelly and Denis O'Sullivan v. Ghost Gunner, Inc. dba*
4 *GhostGunner.net, et al.*, Case No. 34-2021-00302934 CU-PO-GDS). Though the shooting
5 incident in *O'Sullivan* is different than the underlying incident here, the factual issues
6 surrounding receiver blanks, their design, manufacture and distribution, as well as the legal
7 issues relating to the validity of Plaintiffs' legal theories, are virtually identical and are therefore
8 similarly suitable for resolution at the pleading motion stage. Defendants therefore request this
9 Court maintain the current stay on all proceedings pending resolution of the procedural issues
10 surrounding coordination of the *O'Sullivan* case for purposes of pleading motions.

11 3. Discovery Schedule

12 Defendants contend the issues raised in the operative Complaints raise questions of law
13 suitable for resolution at the pleading stage, including but not limited to: (1) lack of duty, (2) lack
14 of causation, (3) failure to state a claim for public nuisance, (4) legality of products sold by
15 certain defendants and therefore the failure to state a claim for violation of Civil Code §§ 17200,
16 17500, (5) inapplicability of plaintiffs' market share liability theory; (6) unconstitutionality of
17 California's Assault Weapons Control Act (Penal Code §§ 30510, *et seq.*) following the District
18 Court's ruling in *Miller v. Bonta*, 3:19-cv-01537 (S.D. Cal.) now before the Ninth Circuit Court
19 of Appeals (Case No. 21-55608); (7) lack of standing to assert a claim under Civil Code ¶ 17200,
20 and; (8) The Protection of Lawful Commerce in Arms Act (15 U.S.C. §§ 7901, *et seq.*).

21 In light of these legal issues, defendants request the current discovery stay remain in
22 place until after Court resolution of the demurrers/motions to strike.

23 4. Method and Schedule For Submitting Preliminary Legal Questions

24 As set forth in Para. 2 above, Defendants are seeking coordination of the *O'Sullivan*
25 matter for purposes of pleading motions in light of the common issues of fact and law. In the
26 event coordination does not occur, defendants request the following briefing schedule for
27 defense demurrers/motions to strike (calculated from the date of any order denying the petition to
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1 add *O'Sullivan* to this coordinated proceeding):

- 2 a. 30 days: Last Day to File/Serve Demurrers/Motions to Strike;
- 3 b. 60 days: Last Day to File/Serve Oppositions;
- 4 c. 85 days: Last Day to File/Serve Reply Briefs;
- 5 d. 100 days: Hearing on Demurrers/Motions to Strike

6 5. Establishment of Central Document Depository

7 Defendants request this issue be deferred until after Court resolution of the coordination
8 question and the demurrers/motions to strike.

9 6. Further Pretrial Conferences

10 Defendants request this issue be deferred until after Court resolution of the coordination
11 question and the demurrers/motions to strike.

12 7. Filing/Service of Documents In A Central Depository

13 Defendants agree that there are benefits to utilizing a filing/service vendor and
14 recommend File & Serve Xpress.

15 8. Related Cases

16 Defendants are aware of another action currently pending in Sacramento Superior Court
17 involving nearly all of the defendants herein, as well as a number of other defendants. (See, *Kelly*
18 *and Denis O'Sullivan v. Ghost Gunner, Inc. dba GhostGunner.net, et al.*, Case No. 34-2021-
19 00302934 CU-PO-GDS.) Though the facts of the underlying shooting are different, the operative
20 Complaint contains nearly all of the same claims and therefore raises many of the same legal
21 issues.

22 Defendants wish to discuss the propriety of including the *O'Sullivan* matter in this
23 coordinated proceeding through the pleading motion stage so that this Court can decide the same
24 legal issues and avoid inconsistent rulings in different counties. In connection with the Court's
25 resolution of the coordination question, defendants request that the current stay remain in place.

26 9. Bifurcation And Trial of Any Issue or Defense

27 Reserved.

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Respectfully submitted.

Dated: August 5, 2021

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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
4 Creek, California 94596. On the date set forth below, I served the following document(s):

5 **DEFENDANTS' PRELIMINARY TRIAL CONFERENCE MEMORANDUM**

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

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20 Service was accomplished as follows:

21
22 X **BY ELECTRONIC TRANSMISSION:** Based on a Court Order or an agreement of
23 the parties to accept service by electronic transmission, I caused the documents to be
24 electronically sent to the persons on the attached service list. I did not receive, within a
25 reasonable time after the transmission, any electronic message or other indication that the
26 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 August 5, 2021, at
27 Walnut Creek, California.

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