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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE

Coordination Proceeding Special Title  
(Rule 3.550)

Case No. 5167

*Assigned to the Honorable William D. Cluster  
as Coordination Trial Judge, Dept. No. CX104*

GHOST GUNNER FIREARMS CASES

Included actions:

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
O'SULLIVAN PLAINTIFFS' OPPOSITION  
TO CERTAIN DEFENDANTS' PETITION  
TO COORDINATE ADD-ON CASE**

Cardenas v. Ghost Gunner, Inc., d/b/a  
GhostGunner.net, et al., Orange County  
Superior Court Case No. 30-2019-  
01111797-CU-PO-CJC

Proposed Add-On Case:

McFadyen v. Ghost Gunner, Inc. d/b/a  
Ghost Gunner.net, et al., San Bernardino  
Superior Court Case No. CIVDS1935422

Sacramento County Superior Court Case No  
34-2021-00302934-CU-PO-GDS

KELLEY and DENIS O'SULLIVAN, in  
their Individual Capacity and KELLY  
O'SULLIVAN as Administrator of the  
Estate of TARA O'SULLIVAN, Deceased,

Plaintiffs,

v.

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

BLACKHAWK MANUFACTURING  
GROUP INC., d/b/a  
80PERCENTARMS.COM;

RYAN BEEZLEY and BOB BEEZLEY,  
d/b/a RBTACTICALTOOLING.COM;

1 GHOST AMERICA LLC, d/b/a  
GHOSTGUNS.COM;  
2  
3 GHOST FIREARMS LLC, d/b/a GRID  
DEFENSE and GHOSTRIFLES.COM;  
4  
5 JUGGERNAUT TACTICAL INC., d/b/a  
JTACTICAL.COM;  
6  
7 MFY TECHNICAL SOLUTIONS LLC,  
d/b/a 5DTACTICAL.COM;  
8  
9 TACTICAL GEAR HEADS LLC, d/b/a  
80-LOWER.COM; AR-  
10 15LOWERRECEIVERS.COM; and  
80LOWERJIG.COM;  
11  
12 JAMES TROMBLEE, JR., d/b/a  
USPATRIOTARMORY.COM;  
13  
14 INDUSTRY ARMAMENT INC., d/b/a  
AMERICANWEAPONSCOMPONENTS.  
COM;  
15  
16 THUNDER GUNS LLC, d/b/a  
THUNDERTACTICAL.COM;  
17  
18 POLYMER80, INC., d/b/a  
POLYMER80.COM and P80 TACTICAL;  
19  
20 JSD SUPPLY, d/b/a JSDSUPPLY.COM  
and 80PERCENTGUYS.COM;  
21  
22 JAMES MADISON TACTICAL LLC,  
d/b/a  
JAMESMADISONTACTICAL.COM;  
23  
24 WM. C. ANDERSON, INC., d/b/a  
ANDERSONMANUFACTURING.COM;  
25  
26 MATRIX ARMS, d/b/a  
MATRIXARMS.COM;  
27  
28 M-16 PARTS SUPPLY LLC, d/b/a M-  
16PARTS.COM; and  
DOES 1-50,  
Defendants.

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that, pursuant to California Rule of Court 3.544(b), Plaintiffs  
3 Kelly and Denis O’Sullivan (“*O’Sullivan* Plaintiffs”) hereby submit this Memorandum of Points  
4 and Authorities of *O’Sullivan* Plaintiffs in Opposition to Certain Defendants’ Petition to  
5 Coordinate Add-On Case. Certain Defendants’ Petition was filed in this Court on September 10,  
6 2021,<sup>1</sup> and seeks to coordinate *O’Sullivan v. Ghost Gunner, Inc., et al.*, Case No. 34-2021-  
7 00302934-CU-PO-GDS pending in the Superior Court of Sacramento County, with the *Ghost*  
8 *Gunner Firearms Cases* currently coordinated before this Court as Judicial Council Coordination  
9 Proceeding No. 5167.

10 In summary, the *O’Sullivan* Plaintiffs oppose coordination as improper under California  
11 Code of Civil Procedure § 404.1 because the common questions of law do not predominate over  
12 wholly separate questions of fact, and are far outweighed by the other factors under the CCP §  
13 404.1 inquiry. Certain Defendants’ request to stay *O’Sullivan* pending this Court’s ruling on the  
14 Petition is moot, as the *O’Sullivan* Court adopted the parties’ stipulation to that effect on October  
15 1, 2021. The *O’Sullivan* Plaintiffs echo Certain Defendants’ request for a hearing before this  
16 Court on Certain Defendants’ Petition. See Cal. Rules of Court 3.527(b); 3.544(c).

17 The *O’Sullivan* Plaintiffs’ Opposition is based on this submission, oral argument of  
18 counsel, and any other materials submitted in connection with this Opposition.

19 Dated: October 6, 2021

Respectfully submitted,

21 /s/ Robert J. Nelson

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28 <sup>1</sup> Pursuant to California Rule of Court 3.544(b), the *O’Sullivan* Plaintiffs filed a Notice of  
Opposition to the Petition in this Court on September 22, 2021.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 INTRODUCTION

3 Certain Defendants<sup>2</sup> recognize in their Petition that this coordinated proceeding currently  
4 consists of “two separately filed *but essentially identical* cases that were coordinated by this  
5 Court.” Pet. at 4 (emphasis added). Yet Certain Defendants now seek to coordinate with these  
6 two “essentially identical” cases a third case, *O’Sullivan v. Ghost Gunner, Inc., et al.*  
7 (*“O’Sullivan”*), which Certain Defendants readily concede “aris[es] from a separate incident.” *Id.*  
8 In fact, the *O’Sullivan* case involves the murder of Sacramento Police Officer Tara O’Sullivan  
9 who was shot in the line of duty in Sacramento County. This case therefore involves an entirely  
10 different set of facts from the “essentially identical cases” that are currently part of this  
11 coordinated proceeding. The fact that some of the defendants in this coordinated proceeding now  
12 face claims against them in a different county arising from an entirely different factual scenario  
13 does not of itself merit coordination under California Code of Civil Procedure § 404.1. Limiting  
14 coordination to the pretrial stages will not cure the significant problems posed by the essential  
15 point that this case stems from wholly separate facts from those at issue in the coordinated cases.  
16 Perhaps that is why only six of the 17 named defendants in the *O’Sullivan* case join in this  
17 Petition.

18 Additionally, litigation against these so-called “ghost gun” retailers and manufacturers for  
19 the harm caused by their products is not limited to these three cases. In August 2021, for  
20 example, the San Francisco District Attorney filed a complaint for violations of California  
21 Business and Professions Code §§ 17200 *et seq.* and 17500 *et seq.*, naming three such defendants  
22 and noting that the People will amend the pleadings as other ghost gun manufacturers become  
23 known.<sup>3</sup> Also in August 2021, two Los Angeles County Sheriffs’ Deputies shot by ghost guns  
24 while on duty brought suit against Defendant Polymer80 for negligence and public nuisance

25 \_\_\_\_\_  
26 <sup>2</sup> Only six of the 17 named Defendants in this case join in this Petition: Juggernaut Tactical, Inc.;  
27 Blackhawk Manufacturing Group, Inc.; Ryan Beezley and Bob Beezley; Ghost Firearms, LLC,  
28 MFY Technical Solutions, LLC; and Thunder Guns, LLC. The remaining 11 defendants in the  
case have not joined the Petition. Accordingly, throughout this brief Plaintiffs refer to “Certain  
Defendants” when referring to those defendants that have joined the Petition.

<sup>3</sup> See Glenn Thrush, *San Francisco Sues Three Online Retailers for Selling ‘Ghost Guns’*, New  
York Times (Aug. 18, 2021), <https://www.nytimes.com/2021/08/18/us/sf-ghost-guns.html>.

1 stemming from the manufacture and sale of its products.<sup>4</sup> Though it may be more convenient for  
2 some of the *defendants* to consolidate the claims against them into a single litigation, the  
3 remaining factors bearing on coordination do not support Certain Defendants’ request, as the facts  
4 surrounding each case, including whose ghost guns were involved in the criminal misconduct and  
5 how and why the assailant obtained the guns used to commit murderous acts, will predominate.  
6 Not only will the facts at issue be qualitatively different in each of the cases that involve entirely  
7 separate and distinct criminal misconduct, but the cases will likely also differ in terms of which  
8 Defendants’ guns were utilized in the crimes at issue. For example, to the extent that any  
9 *O’Sullivan* Defendant is able to demonstrate that its guns were not utilized in the killing of  
10 Officer O’Sullivan, then that Defendant will be dismissed from *O’Sullivan*. As such, it may well  
11 be that there ultimately will be different defendants in *O’Sullivan* than those in the coordinated  
12 cases, thereby eliminating entirely any possible efficiency gains from coordination.

### 13 **STATEMENT OF FACTS**

14 This Court is familiar with the facts giving rise to the *Ghost Gunner Firearms Cases*: each  
15 Plaintiff across the two cases is a victim, survivor, or family member of a victim or survivor of a  
16 violent shooting rampage that took place in Tehama County in November 2019. As Certain  
17 Defendants put it: “The only real difference between the *McFadyen* and *Cardenas* matters is that  
18 they had been filed in different courts.” Pet. at 6. There are currently 15 named Defendants in  
19 the *Ghost Gunner Firearms Cases*, all of whom *Ghost Gunner* Plaintiffs allege manufactured  
20 and/or sold ghost gun products into California. Because it is currently unknown (and it might  
21 never be known) which Defendant(s) manufactured and/or sold the specific gun parts used in the  
22 rampage, in part because of possible destruction of evidence at the shooter’s home, Plaintiffs in  
23 those cases are pursuing a market share theory of liability. Because the shooter was killed, there  
24 is no associated criminal case. After nearly a year of delay caused by the difficulty of serving the  
25 Defendants and other preliminary matters (including Defendants’ original request for  
26 coordination), Plaintiffs in the *Ghost Gunner Firearms Cases* are now ready to proceed to

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27 <sup>4</sup> See Robert Jablon, *L.A. County deputies who were shot in Compton ambush sue maker of ‘ghost*  
28 *gun’ kit*, Los Angeles Times (Aug. 10, 2021), <https://www.latimes.com/california/story/2021-08-10/sheriff-deputies-sue-ghost-gun-kit-maker>

1 discovery.

2 While the *O'Sullivan* Plaintiffs plead five of the six causes of action raised against 12 of  
3 the 15 named Defendants in the *Ghost Gunner Firearms Cases*, the similarities end there. The  
4 *O'Sullivan* Plaintiffs name five additional Defendants who are not currently parties to this  
5 coordinated proceeding. As noted, the *O'Sullivan* claims arise from the fatal shooting of  
6 Sacramento Police Officer Tara O'Sullivan, who was shot in the line of duty in June 2019 with  
7 one or more ghost gun products, while other ghost guns were used to fend off first responders  
8 attempting to remove the victim from the scene. Because the victim in *O'Sullivan* was a member  
9 of local law enforcement who was killed while serving her community, the case is of great import  
10 to the people of Sacramento. The criminal prosecution of the shooter who used Defendants'  
11 product(s) to kill Officer O'Sullivan is currently pending in Sacramento County Superior Court.  
12 The ongoing nature of the criminal prosecution will inevitably affect the *O'Sullivan* Plaintiffs'  
13 ability to complete discovery, as Sacramento law enforcement's full cooperation with this  
14 litigation is unlikely until after their investigation and prosecution is complete. As a result,  
15 critical discovery in *O'Sullivan* will almost certainly have to follow the criminal prosecution,  
16 which would mean that *O'Sullivan* would likely be on a separate discovery tract than the  
17 currently coordinated *Ghost Gunner Firearms Cases*.

#### 18 **APPLICABLE LAW**

19 The *O'Sullivan* Plaintiffs do not dispute Certain Defendants' statement of the applicable  
20 law governing a request to coordinate an add-on case. *See* Pet. at 5. As stated in California Code  
21 of Civil Procedure § 404.1:

22 Coordination of civil actions sharing a common question of fact or  
23 law is appropriate if one judge hearing all of the actions for all  
24 purposes in a selected site or sites will promote the ends of justice  
25 taking into account whether the common question of fact or law is  
26 predominating and significant to the litigation; the convenience of  
27 parties, witnesses, and counsel; the relative development of the  
28 actions and the work product of counsel; the efficient utilization of  
judicial facilities and manpower; the calendar of the courts; the  
disadvantages of duplicative and inconsistent rulings, orders, or  
judgments; and, the likelihood of settlement of the actions without  
further litigation should coordination be denied.

1 Thus, in considering Certain Defendants’ Petition, this Court should analyze the above factors.<sup>5</sup>

2 **ARGUMENT**

3 Coordination of *O’Sullivan* with the *Ghost Gunner Firearms Cases* will not “promote the  
4 ends of justice” within the meaning of California Code of Civil Procedure § 404.1 because: (1)  
5 the common questions of law do not predominate over the complete and obvious substantial  
6 differences in fact; (2) coordination is apparently more convenient only for a subset of petitioning  
7 Defendants (only 6 out of 20); (3) *O’Sullivan* is likely to proceed at a slower pace than the *Ghost*  
8 *Gunner Firearms Cases* due to the impact of the ongoing criminal matter in Sacramento County;  
9 (4) *O’Sullivan* already is directed against a different set of Defendants (with some overlap) and  
10 may ultimately be pursued against an entirely different group of Defendants than those in the  
11 *Ghost Gunner* cases; and (5) coordination will impede settlement prospects for both actions. The  
12 other § 404.1 factors potentially relevant to a coordination request have little or no relevance to  
13 Certain Defendant’s Petition, and are easily outweighed by these predominating considerations.  
14 *See Ford Motor Warranty Cases*, 11 Cal. App. 5th 626, 639, 218 Cal. Rptr. 3d 185, 194 (2017)  
15 (“We realize, of course, that there are circumstances where the addition of a substantively similar  
16 case would be properly rejected by the coordination trial judge—such as if the case is ready for  
17 trial, or *some other feature distinguishes it* from the cases in the coordination proceeding.”)  
18 (emphasis added).

19 **I. Common Questions Of Law Do Not Predominate Over Wholly Distinct Questions Of**  
20 **Fact.**

21 While *O’Sullivan* and the *Ghost Gunner Firearms Cases* do share “a common question of  
22 . . . law,” Cal. Civ. Code § 404.1, in that Plaintiffs in both actions are pursuing (with one  
23 exception) the same common law and statutory consumer protection claims against some of the  
24 same defendants, those issues are not “predominating and significant to the litigation” as § 404.1  
25 requires. Indeed, while Certain Defendants conclusorily assert that the common questions of law  
26 “undeniably” predominate, they make no attempt to explain why they believe that is the case, nor

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27 <sup>5</sup> Defendants are correct that the *O’Sullivan* Plaintiffs do not dispute that *O’Sullivan* is complex  
28 within the meaning of California Rule of Court 3.400: the case has been designated as such by the  
*O’Sullivan* Court in Sacramento. *See* Pet. at 7.

1 can they. *See* Pet. at 8. This is because the wholly distinct questions of fact predominate: each  
2 matter involves different shooters, in different locations, under different circumstances,  
3 *potentially using entirely different products manufactured and/or sold by different defendants.*  
4 The *O'Sullivan* Plaintiffs are open to working with all Defendants to determine if a specific  
5 Defendant's products were unequivocally not involved in causing Plaintiffs' harm—and  
6 potentially dismissing such defendants as appropriate. The *O'Sullivan* and *Ghost Gunner* cases  
7 already have different defendant pools, and if some defendants are dismissed from *O'Sullivan*  
8 following discovery, it is not only possible, but likely, that the *O'Sullivan* action will have  
9 partially or completely different defendants.

10 As discussed above, *O'Sullivan* arises out of its own set of facts, completely unrelated to  
11 those in the *Ghost Gunner* cases. Plaintiffs' daughter, Police Officer Tara O'Sullivan, was shot  
12 multiple times on June 19, 2019 while responding to a domestic disturbance call at a residence in  
13 Sacramento, California. Because the shooter continued to shoot at police from within the  
14 residence after Officer O'Sullivan was shot, it took approximately 40 minutes for Officer  
15 O'Sullivan to be removed from the scene. The shooter was apprehended only after a nearly eight-  
16 hour long standoff with law enforcement. Law enforcement has released some information  
17 regarding the facts on the ground at the time of Officer O'Sullivan's death, but more information  
18 will be required to resolve Plaintiffs' allegations, including facts relating to the ghost guns  
19 recovered at the scene of the crime.

20 *O'Sullivan* has an additional factual complexity: whereas the *Ghost Gunner Firearms*  
21 *Cases* fact pattern involve two recovered ghost gun products, in *O'Sullivan*, the criminal record  
22 suggests that at least six serialized assault-style rifles were recovered from the scene. Law  
23 enforcement has released photos of four weapons recovered from the residence where the shooter  
24 took cover while firing at Officer O'Sullivan, but has not released photos of the additional  
25 weapons recovered from elsewhere on the property. It is unclear precisely which ghost gun  
26 product(s) were used to shoot and kill Officer O'Sullivan, but it may be the case that other guns  
27 were used to fend off first responders attempting to rescue her, delaying medical attention and  
28 thereby contributing to her death. These unique factual considerations will be relevant to the



1 *O'Sullivan* Plaintiffs' theory of the case, but of course are not at issue in the *Ghost Gunner*  
2 *Firearms Cases*, where causation may be more straightforward.

3 **II. Coordination Is More Convenient Only For Certain Defendants.**

4 While the six petitioning Defendants contend that coordination is more convenient for  
5 them, the majority of the Defendants across the *Ghost Gunner* and *O'Sullivan* actions have not  
6 joined in that Petition (and some appear to oppose it, at least in part). And all of the plaintiffs in  
7 the *Ghost Gunner* and *O'Sullivan* cases oppose coordination. For those parties who oppose—  
8 Plaintiffs and Defendants—coordination offers either no benefit or would be more burdensome.  
9 Every potential percipient witness to the underlying incident in *O'Sullivan*, as well as the  
10 *O'Sullivan* Plaintiffs themselves, are based in Sacramento, with no connection whatsoever to  
11 Orange County. Certain Defendants' arguments about the burden of responding to duplicative  
12 discovery requests are a red herring, as it would take negligible resources to conform an already-  
13 prepared response to a third action if both sets of Plaintiffs seek the same information. In  
14 contrast, the *O'Sullivan* Plaintiffs' discovery responses will *actually* differ from those of the  
15 Plaintiffs in the *Ghost Gunner* actions, because, of course, the *O'Sullivan* Plaintiffs and the *Ghost*  
16 *Gunner Firearms Cases* Plaintiffs have few, if any, factual similarities.

17 **III. The Actions Are Set To Develop At Different Paces.**

18 Although it is true that both the *Ghost Gunner Firearms Cases* and *O'Sullivan* are  
19 currently at their early stages, Plaintiffs in the *Ghost Gunner* cases are ready and eager to proceed  
20 to discovery after nearly a year's worth of delays. In contrast, although the *O'Sullivan* Plaintiffs  
21 also desire to move the litigation along as quickly as possible, they recognize that there may be  
22 delays in completing critical discovery due to the fact that the related criminal trial has not yet  
23 commenced. Sacramento law enforcement has indicated to the *O'Sullivan* Plaintiffs that they are  
24 unable to cooperate with any civil investigation related to the private suit until their own  
25 investigation of the incident and criminal prosecution is complete. As of a July 23, 2021 pretrial  
26 hearing in the criminal action, the expectation was that the trial of criminal defendant Adel  
27 Ramos would take place between late 2022 and early 2023, so likely more than a year from now.  
28 Accordingly, while the *O'Sullivan* Plaintiffs will seek to move the litigation forward as much as

possible without law enforcement’s involvement, the *Ghost Gunner Firearms Cases* should be allowed to proceed unencumbered by the potential delay in *O’Sullivan*.

**IV. Judicial Resources Will Not Be Wasted If The Actions Are Heard Separately.**

Given the substantial factual differences discussed above, as well as different Defendant groups, there is no certainty that the pretrial motions will be “essentially identical,” as Certain Defendants assert. *See* Pet. at 11. Further, there should not be a “large volume” of such motions, *id.*, as the defendants in *O’Sullivan* have stipulated to “organize themselves and consider ways to efficiently present their defense of the suit, including by, for example, the filing of joint responsive pleadings.”<sup>6</sup> *See* Brady Decl. ISO Pet., Exh. G. In other words, the parties have already considered, and will continue to consider ways to preserve judicial resources in each action.

Certain Defendants advise that “the Ghost Gunner Firearms Cases and the *O’Sullivan* matter should not be coordinated for trial.” Pet. at 7 (emphasis in original). In response, Plaintiffs note the significant value in having the same Court oversee an action from discovery through trial. Considering the complex nature of these cases, the *O’Sullivan* Plaintiffs and the *O’Sullivan* Defendants will all benefit from a trial judge who has worked on the case from inception to trial.

**V. The Potential For Inconsistent Rulings Is No Greater Here Than In Other Situations Where A Party Faces Similar Claims In Separate Actions.**

If there are “inconsistent” legal rulings made in *O’Sullivan* and the *Ghost Gunner Firearms Cases*, it will likely be because the facts giving rise to the causes of action differ, justifying different outcomes as those facts are applied to the law. And, as discussed above, because the cases are likely to develop at different paces, nothing prevents the Defendants named in both actions from referring the *O’Sullivan* Court to this Court’s rulings whenever relevant. Should an issue at the trial court stage in one action be appealed in another, the parties can stipulate to a stay of the appeal pending the second trial court ruling. This circumstance is no

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<sup>6</sup> Plaintiffs in the *Ghost Gunner* cases have likewise proposed a single, consolidated briefing schedule for demurrers.

1 different from that commonly presented in complex litigation, where the same defendant(s) faces  
2 similar claims in separate actions because the underlying facts (*e.g.*, the type of plaintiff, the way  
3 in which they were injured, the location of injury) differ.

4 **VI. Coordination Could Impede The Potential For Settlement In Both Actions.**

5 Certain Defendants argue that failure to coordinate will make settlement less attractive for  
6 them, because a global settlement across the three actions is preferable. Pet. at 11–12. This again  
7 highlights how coordination serves only to benefit some subset of Defendants. But *O’Sullivan’s*  
8 distinct fact pattern, and the circumstances described above that will follow as a result, would  
9 inevitably complicate an otherwise straightforward settlement process for the *Ghost Gunner*  
10 *Firearms Cases* parties. For example, the coordinated actions may become interested in  
11 settlement discussions with one or more Defendant(s), but be held up by outstanding discovery  
12 issues in *O’Sullivan*. Alternatively, the citizen-Plaintiffs in the coordinated actions may wish to  
13 demand a different type of injunctive relief in a settlement agreement from that sought by the  
14 *O’Sullivan* Plaintiffs, whose daughter was a law enforcement officer killed in the line of duty.  
15 Further, if discovery reveals information that justifies dismissal of one or more Defendant(s), the  
16 prospect of a “global” settlement may not exist, as the Defendants remaining in the *Ghost Gunner*  
17 *Firearms Cases* versus in *O’Sullivan* could differ entirely (indeed, as they already do in  
18 substantial part).

19 **CONCLUSION**

20 For the foregoing reasons, the *O’Sullivan* Plaintiffs respectfully request that the Court  
21 deny Certain Defendants’ Petition to coordinate *O’Sullivan* with the *Ghost Gunner Firearms*  
22 *Cases* for any stage of the litigation.

1 Dated: October 6, 2021

Respectfully submitted,

3 /s/ Robert J. Nelson

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