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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

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

Plaintiffs,

vs.

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

Defendants.

Case No. 34-2021-00302934-CU-PO-GDS

[Assigned to the Honorable Judge Richard K. Sueyoshi; Dept. 40]

JOINT STIPULATION AND STATUS UPDATE RE: CASE SCHEDULE

Plaintiffs and Defendants Ryan Beezley, Bob Beezley, Ghost Firearms, LLC, Thunder Guns, LLC, and Polymer80, Inc., by and through their respective counsel of record, hereby stipulate as follows:

WHEREAS, on October 20, 2021, the Court issued an order which, in relevant part, stayed this matter pending a ruling by Orange County Superior Court Judge William D. Claster on Defendants' Petition to Coordinate Add-On Case ("Petition"), and required the parties to inform this Court of Judge Claster's decision within one week of such ruling;

WHEREAS, on November 12, 2021, Judge Claster held a hearing in which he orally denied Defendants' Petition, and indicated that he would adopt his tentative ruling[1] denying the

[1] Judge Claster's tentative ruling denying Defendants' Petition is attached to this filing as **Exhibit A**.

Petition;

THEREFORE, the parties jointly agree to submit to this Court a proposed schedule for responsive pleadings in this action by December 6, 2021, in order to give the parties sufficient time to propose an efficient and mutually agreeable schedule.

IT IS SO STIPULATED.

Dated: November 19, 2021

MICHEL & ASSOCIATES, P.C.

Sean A. Brady
Attorneys for Defendants Ryan Beezley and Bob Beezley, Thunder Guns, LLC, Ghost Firearms, LLC, and Polymer80, Inc.

Dated: November 19, 2021

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Caitlin M. Nelson
Attorneys for Plaintiffs

PROPOSED ORDER

Pursuant to the Parties' stipulation and good cause shown, it is hereby ORDERED that:

The parties will submit a proposed schedule for responsive pleadings in this matter by December 6, 2021.

IT IS SO ORDERED.

Dated: _____

_____
Honorable Judge Richard K. Sueyoshi
Judge of the Superior Court

EXHIBIT A

6	**JCCP 5167** Ghost Gunner Firearms Cases	**1.Defendants and Petitioners Blackhawk Manufacturing Group, Inc.; Ryan Beezley and Bob Beezley; Ghost Firearms, LLC; MFY Technical Solutions, LLC; and Thunder Guns, LLC's Motion for Coordination (ROA # 114)** **2.Status Conference**

Defendants Blackhawk Manufacturing Group, Inc.; Ryan Beezley; Bob Beezley; Ghost Firearms, LLC; MFY Technical Solutions, LLC; Thunder Guns, LLC; and Juggernaut Tactical, Inc. petition for an order coordinating *O'Sullivan v. Ghost Gunner, Inc.*, Sacramento County SC No. 34-2021-00302934-CU-PO-GDS as an add-on case. For the reasons set forth below, the petition is DENIED.

I. Factual Background

Cardenas and *McFayden*, the cases coordinated as the *Ghost Gunner Firearms Cases* in this proceeding, arise from a shooting spree in Tehama County in November 2017. The plaintiffs are the surviving victims of the shooting spree or the survivors of deceased victims. Kevin Neal, the shooter, used so-called "ghost guns" in his spree. As discussed in more detail in the ruling on the coordination petition, the defendants in the *Ghost Gunner Firearms Cases* allegedly manufacture ghost guns. More specifically, defendants manufacture component parts of firearms, and these parts are assembled by the end user into finished guns. Because defendants' component parts are not considered "firearms" under federal law, various federal firearms laws are inapplicable to defendants' component parts and the finished guns (provided the end user assembles the final product for personal use). Among other things, neither the component parts nor the finished guns bear a serial number, so the guns are referred to as "ghost guns." The *Ghost Gunner* plaintiffs allege that Neal would not have been able to purchase firearms legally under California law.

O'Sullivan arises from a separate incident. The plaintiffs in that case are Kelley and Denis O'Sullivan, the survivors of Sacramento police officer Tara O'Sullivan. Officer O'Sullivan was killed while responding to a domestic disturbance call. While Officer O'Sullivan and others were helping a woman remove belongings from a residence, Adel Ramos allegedly exited and began firing at police. Officer O'Sullivan was hit. Ramos kept firing for nearly an hour, keeping rescuers at bay while Officer O'Sullivan lay bleeding. She died of her injuries. Ramos was eventually captured after a long standoff.

Subsequent investigation showed that Ramos's alleged attack was likely premeditated. He had barricaded the front door of the residence and cached four firearms in strategic locations, all of which he fired at police. Police also seized a significant amount of ghost gun components from the residence along with assembly equipment, suggesting Ramos was illegally assembling ghost guns for sale. At the time of the shooting, Ramos had an active warrant for battery. He also had two prior DVROs that had required him to turn in all of his firearms to law enforcement. The *O'Sullivan* plaintiffs allege Ramos would not have been able to purchase firearms legally under California law.

As in the *Ghost Gunner Firearms Cases*, the *O'Sullivan* defendants are manufacturers of ghost gun components. Every defendant

in *Ghost Gunner* is also a defendant in *O'Sullivan*, but *O'Sullivan* also includes additional defendants. The operative complaints in *Cardenas*, *McFayden* and *O'Sullivan* all allege a market share theory of liability on the grounds that the defendants' products are indistinguishable from one another. However, the *O'Sullivan*plaintiffs represent in their opposition that they understand defendants' products may be distinguishable, and if so, they are willing to proceed against only those parties whose component parts were used in Officer O'Sullivan's death.

II. Propriety of Add-On Petition

Add-on petitions are governed by the same standards as petitions for coordination in the first instance. (CRC 3.544.)

CCP § 404.1 provides:

> Coordination of civil actions sharing a common question of fact or law is appropriate if one judge hearing all of the actions for all purposes in a selected site or sites will promote the ends of justice taking into account whether the common question of fact or law is predominating and significant to the litigation; the convenience of parties, witnesses, and counsel; the relative development of the 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.

Petitioning defendants identify a sole common legal question that predominates, and thus arguably increases convenience through coordination, poses a risk of inconsistent rulings if uncoordinated, etc.: whether the market share theory of liability applies. While at p. 9, line 11 of the petition, they say there are "many dispositive matters of law common in each of these cases," the only one actually mentioned as a common dispositive issue is the applicability of market share liability (specifically, whether or not the defendants' products are distinguishable, because market share liability is inapplicable if the products can be distinguished).

For the following reasons, the Court finds the add-on coordination of *O'Sullivan* inappropriate.

A. Overstatement of Market Share Liability's Importance

At least at the pleading stage, the applicability of market share liability isn't a fully dispositive issue. Even if petitioning defendants are correct that market share liability doesn't apply here and a demurrer on that ground should be sustained, California's liberal amendment policy would require that all plaintiffs be given the chance to plead a case not dependent on market share liability. Were that to happen, market share liability would disappear as a common issue between the *Ghost Gunner Firearms Cases* and *O'Sullivan*.

Furthermore, if market share liability is inapplicable, petitioning defendants' concerns about duplicative discovery are overstated as well. The Court assumes for the sake of argument that discovery regarding market share liability would largely overlap in the *Ghost Gunner Firearms Cases*and *O'Sullivan*. But if the plaintiffs are required to trace the component parts used in each incident to specific manufacturers, the Court sees no reason why discovery would overlap to that extent. The cases involve different guns in different cities at different times.

B. No Particular Danger from Inconsistent Rulings

In complex coordinated cases, there are two principal ways that a risk of inconsistent rulings would justify coordination. The first is if the coordinated cases have an identity of parties, and two courts might reach opposing rulings regarding exactly the same parties. For example, if two courts each certify an identical statewide class and come out the opposite way on the merits, the defendant is simultaneously liable and not liable to the same class.

The second is when the coordinated cases involve similar (but not the same) underlying facts, and case management concerns require a single judge overseeing all cases (or a part of all cases). For example, in *McGhan Medical Corp. v. Superior Court* (1992) 11 Cal.App.4th 804, 300+ breast implant defects were coordinated even though they involved different manufacturers, different doctors who performed implant surgery, etc. The Court of Appeal noted that many of the dispositive motions in the cases would involve recurring issues, and having 300 judges issuing 300 different conflicting decisions would make effective appellate review (and harmonization of the law) impossible. Similarly, in *Ford Motor Warranty Cases* (2017) 21 Cal.App.5th 626, it was important that discovery rulings in 900+ Song-Beverly Act cases be uniform. Although each plaintiff's specific facts were different, the cases all involved the same defect-related discovery from the manufacturer, and 900 different rulings on discovery motions relating to the same discovery was too great a risk to let the cases remain uncoordinated.

Petitioning defendants argue these cases are like *McGhan* and *Ford*. The Court disagrees. While some defendants overlap, there is not an identity of parties such that defendants would be simultaneously liable and not liable on the same facts. And while there are multiple similar proceedings, there are only two, not 300 or 900. If this Court and the Sacramento court reach opposite conclusions on market share liability, the law could easily be harmonized on appeal.

For comparison, consider two individual lawsuits for unpaid overtime filed against the same employer in two separate courts. Both employees have signed identical arbitration agreements with the employer, and the employer moves to compel arbitration in both cases. One court finds the arbitration agreement substantively unconscionable, and the other court orders the parties to arbitration. No one would seriously argue that coordination is required because the

cases involve interpretation of the same arbitration agreement. If necessary, any differences between the two rulings could be resolved through appeals. But if there were 900 individual overtime cases involving the same arbitration agreement, coordinated case management might be appropriate.

C. Overstated Discovery Efficiencies

Petitioning defendants urge that the potential for onerous, duplicative discovery supports coordination. The Court disagrees: petitioning defendants' perceived discovery efficiencies only come into play if market share liability applies, and petitioning defendants intend to argue that market share liability *does not* apply.

First, if the cases are coordinated, and this Court rules market share liability applies, then two sets of plaintiffs take one set of market share discovery. The Court agrees that this might be more efficient than two sets of substantially identical discovery, but again, Defendants intend to argue *against* market share liability. Their own theory of the case undercuts the efficiency they claim to seek.

Second, if the cases are coordinated, and this Court rules market share liability doesn't apply, then two sets of plaintiffs take two sets of discovery relating to different guns used in different incidents at different times.

Third, if the cases aren't coordinated, and this Court and the Sacramento court both rule market share liability applies, then two sets of plaintiffs take two sets of substantially identical discovery. The Court agrees this might be comparatively inefficient, but again, Defendants intend to argue *against* market share liability.

That being said, it is not clear that discovery related to market share will necessarily be burdensome or duplicative. Thus, it seems logical that the information gathered by Defendants to respond to discovery regarding market share could be used in both cases. Put another way, Defendants fail to explain why the discovery responses given in the first case on this issue could not also be used, at least to a large extent, in the second case.

Fourth, if the cases aren't coordinated, and this Court and the Sacramento court both rule market share liability doesn't apply, then two sets of plaintiffs take two sets of incident-specific discovery.

Fifth, if the cases aren't coordinated, and this Court and the Sacramento court reach different conclusions on market share liability, then one set of plaintiffs takes discovery on market share liability and another set of plaintiffs takes incident-specific discovery. The Court doesn't see how this would be any more burdensome for defendants than two sets of incident-specific discovery.

Furthermore, the difference in criminal proceedings undercuts any procedural efficiencies. Neal, the perpetrator in the *Ghost Gunner Firearms Cases*, is dead. Ramos, the

alleged perpetrator in *O'Sullivan*, is alive and faces prosecution by the Sacramento County District Attorney. In their opposition brief, the *O'Sullivan* plaintiffs state that law enforcement has informed them it can't be part of civil discovery until Ramos's trial is complete. Ramos is currently scheduled to go to trial sometime between late 2022 and early 2023. The *O'Sullivan*plaintiffs therefore express concern that if the cases are coordinated, their ability to participate in discovery will be hampered by the ongoing criminal proceedings against Ramos.

In reply, petitioning defendants say that if the cases are coordinated and survive demurrer, "equity demands" that the *O'Sullivan* plaintiffs ask for a stay of their portion of the coordinated action. (ROA 174 at p. 8.) This argument undercuts any efficiency associated with coordinated discovery. If the *Ghost Gunner Firearms Cases* were to move forward while the *O'Sullivan* case is stayed, what duplicative discovery is avoided? The *O'Sullivan* plaintiffs, having been denied the chance to take discovery during a stay, would be entitled to propound *exactly the same discovery*, identical to the word, that the *Ghost Gunner* plaintiffs took.

D. Lack of Clarity Regarding Defense Convenience

Petitioning defendants argue that coordination will redound to the benefit of all parties. All plaintiffs, as expected, disagree. More importantly, it appears not all defendants agree with the petitioning defendants. Per petitioning defendants' counsel, non-petitioning defendant Polymer80 reserves the right to oppose coordination for purposes of dispositive motions. (ROA 116, ¶ 9.) If one of the defendants intends to file separate demurrers in the *Ghost Gunner Firearms Cases* and *O'Sullivan*, this suggests the defendants are not on the same page about the convenience of coordination, and it militates against adding on *O'Sullivan*.

III. Conclusion

Even if any one of the foregoing points might not justify denial on its own, taken together, they counsel against coordination of *O'Sullivan*. The petition is therefore denied.