

1 AMY K. VAN ZANT (STATE BAR NO. 197426)
avanzant@orrick.com
2 SHAYAN SAID (STATE BAR NO. 331978)
ssaid@orrick.com
3 ANNA Z. SABER (STATE BAR NO. 324628)
annasaber@orrick.com
4 ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
5 Menlo Park, CA 94025-1015
Telephone: +1 650 614 7400
6 Facsimile: +1 650 614 7401

7 Attorneys for Plaintiffs
Francisco Gudino Cardenas and Troy McFayden, et al.
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ORANGE
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12 GHOST GUNNER FIREARMS CASES

JCCP No. 5167

13 Included actions:

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

14 30-2019-01111797-CU-PO-CJC *Cardenas v. Ghost*
15 *Gunner, Inc. dba GhostGunner.net, et al.*

Superior Court of California
County of San Bernardino
Case No. CIV-DS-1935422

16 CIV-DS-1935422 *McFayden, et al. v. Ghost Gunner,*
17 *Inc., dba GhostGunner.net, et al.*
18

19 Date: December 10, 2021
20 Time: 2:30pm
21 Dept.: CX 104
22 Judge: Hon. William D. Claster

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24 **JOINT CASE MANAGEMENT CONFERENCE STATEMENT**
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1 The Parties respectfully submit this Joint Case Management Conference Statement in
2 advance of the Case Management Conference scheduled for December 10, 2021. Following the
3 last conference, held on November 12, 2021, the Court issued a minute order directing the parties
4 to meet and confer to “ascertain what the Defendants will argue in their demurrers and the page-
5 length that Defendants believe they need.” ROA # 207 (November 12, 2021 Court Minute
6 Order). The parties met and conferred by videoconference and email. As set forth below, the
7 parties have agreed on a demurrer briefing process and schedule as well as written and document
8 discovery limits and a schedule for same.

9 **I. DESCRIPTION OF THE EXPECTED DEMURRER ARGUMENTS**

10 **A. Defendants’ Statement**

11 Expected arguments to be made by all Defendants on demurrer include, but are not limited
12 to: (1) market share liability is not a viable legal theory of recovery based on the allegations in the
13 Complaints, and can never be applied to the products at issue as a matter of law; (2) the
14 Complaints fail to state a claim for negligence per se; (3) the Complaints fail to state a claim for
15 negligent entrustment; (4) Plaintiffs have not sufficiently alleged a cognizable duty owed by
16 Defendants to Plaintiffs; (5) Plaintiffs’ public nuisance cause of action should be merged with
17 Plaintiffs’ negligence claim; and (6) Plaintiffs lack standing to bring their UCL § 17200 claims.

18 Expected arguments that may be raised separately in discrete demurrers by one or more
19 subset of Defendants, include but are not limited to: (1) Plaintiffs’ claims are barred by the
20 Protection of Lawful Commerce in Arms Act (“PLCAA”), a federal immunity statute that
21 insulates manufacturers and sellers of a qualified product from liability for damages resulting from
22 criminal or unlawful misuse of the qualified product by a third-party, unless certain narrow exceptions
23 apply; and (2) Plaintiffs cannot maintain their market share liability claim against mere sellers of the
24 products at issue because market share liability can only be applied against manufacturers as a matter
25 of law.

26 Defendants respectfully reserve their right to raise different or additional arguments that may
27 be developed and/or discovered during the drafting process.

II. PROCESS FOR DEFENDANTS' DEMURRERS: GLOBAL AND UNIQUE

The parties jointly propose that the Defendants be permitted to submit two types of demurrers:

(1) A single, coordinated joint demurrer ("Global Demurrer") addressing issues that apply to all Defendants, including but not limited to those arguments set forth in Section I above.

(2) A maximum of three (3) individual demurrers ("Unique Demurrers") addressing discrete issues unique to some, but not all Defendants, including but not limited to those arguments set forth in Section I above. Defendants warrant that arguments made in Unique Demurrers will not be redundant of those made in the Global Demurrer.

The Parties stipulate, and request that the Court approves, the following processes and schedule demurrers:

Pleading	Page Limits	Deadline
Defendants' Global Demurrer	30 pages	January 24, 2022 (45 days after the December 10, 2021 Status Conference)
Defendants' Unique Demurrers* *Defendants' are limited to filing a maximum of three (3) Unique Demurrers	15 pages each	January 24, 2022 (45 days after the December 10, 2021 Status Conference)
Plaintiffs' Joint Opposition to Defendants' Joint Demurrer	30 pages	March 10, 2022 (45 days after filing of Defendants' Joint Demurrer)
Plaintiffs' Joint Opposition(s) to Defendants' Unique Demurrers	15 pages each	March 10, 2022 (45 days after filing of Defendants' Unique Demurrers)
Defendants' Joint Reply to Joint Demurrer	10 pages	April 4, 2022 (21 days after Plaintiffs' Joint Opposition to Defendants' Joint Demurrer)
Defendants' Joint Replies to Unique Demurrers	7 pages each	April 4, 2022 (21 days after Plaintiffs' Joint Opposition to Defendants' Unique Demurrer)

Hearing	TBD by the Court	Within 21 days of Defendants' Joint Replies, or as soon as the Parties may be heard
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In addition to agreeing on the foregoing briefing process and schedule, the Parties jointly seek guidance from the Court on a proposal the Parties have discussed for addressing one argument the Defendants seek to advance on demurrer. A demurrer on the issue of whether non-manufacturer Defendants can be liable under a market share liability theory would require amendment of the complaints, which currently alleges that each named Defendant is a manufacturer of the products at issue, such as unfinished lower receivers ("receiver blanks") and kits. Certain Defendants have represented that they can submit evidence to show that they did not manufacture the products at issue during the relevant time period. The Parties wish to avoid the need to amend the complaints, if possible, in order that the demurrer process can move forward without further delay. Accordingly, in lieu of amending the complaints, the Parties have discussed a potential stipulation that certain Defendants were not manufacturing the products at issue during the relevant time period (provided the Plaintiffs are satisfied with the evidence the defendants put forth on the issue), such that the Court can accept this as true for purposes of ruling on the demurrers. The Parties jointly make this proposal in an effort to avoid further delay in the adjudication of this action.

If the Court is amenable to this suggested process, the Parties propose that any Defendant who contends that it has not manufactured the products at issue would provide evidence to the Plaintiffs by December 21, 2021 and that the Plaintiffs will provide a response to whether they will agree to stipulate to the allegation that particular Defendants did not manufacture the products at issue during the relevant time period by January 10, 2022, with the Parties submitting a stipulation to that effect by January 12, 2022 for the Court's consideration. In the event that the Plaintiffs do not agree that the evidence provided by a particular Defendant is sufficient for Plaintiffs to entertain a stipulation on the issue of manufacturer status, then the allegations in the complaints will stand as they currently read and the Defendants will have the opportunity to raise the issue at a later date in the litigation.

The Parties recognize that, while offered in the interest of saving time and resources, this is an unconventional approach and thus seek the Court's guidance on the proposal.

III. DISCOVERY LIMITS AND SCHEDULE

A. Written and Document Discovery

The Parties stipulate to, and request that the Court approves, the following limits on written and document discovery:

1. *Special Interrogatories*

- Joint Special Interrogatories. Plaintiffs/Defendants are permitted to jointly serve up to 30 Joint Special Interrogatories which shall be responded to by each and every Defendant/Plaintiff.
- Individual Special Interrogatories. Each Plaintiff/Defendant is permitted to serve up to 5 Individual Special Interrogatories on any other Party.

2. *Form interrogatories*

Plaintiffs/Defendants are permitted to jointly serve a set of Joint Form Interrogatories which shall be responded to by each and every Defendant/Plaintiff.

3. *Requests for production/inspection*

- Joint RFPs. Plaintiffs/Defendants are permitted to jointly serve up to 30 Joint RFPs which shall be responded to by each and every Defendant/Plaintiff.
- Individual RFPs. Each Plaintiff/Defendant is permitted to serve up to 7 Individual RFPs on any other Party.

Each party shall have the right to petition the Court for additional written and/or document discovery, which shall be granted upon a showing of good cause.

b. Depositions

The Parties believe they can have a more meaningful discussion on the procedures for fact depositions after they exchange some preliminary written and document discovery. Accordingly, the Parties request that the Court set another case management conference at which the Parties' proposals for depositions shall be discussed. The Parties request that such further case

management conference be scheduled contemporaneously with the hearing on demurrers.

c. Stipulated Protective Order

The Parties agree to jointly negotiate and execute a stipulated protective order which shall apply to the disclosure of any confidential and/or proprietary documents and information, and which shall be submitted to the Court to be entered at its discretion.

C. Discovery Schedule

The Parties stipulate to, and request that the Court approves, the following fact discovery schedule:

Event	Proposed Deadline
Fact Discovery	
Deadline for Serving Written and Document Discovery	8/31/2022
Deadline to File Discovery Motions on Written and Document Discovery	9/16/2022
Close of Fact Discovery	12/2/2022
Deadline to File Discovery Motions on Fact Depositions	12/16/2022

The Parties agree that an expert discovery schedule should be set at a later date, after the Parties have taken some fact discovery and gained a better sense of expert issues.

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1 **IV. CONCLUSION**

2 The Parties request that the Court set another case management conference on the same
3 date of the hearing on Defendants' Joint and Unique Demurrers to assess the Parties' progress on
4 written and document discovery, to set a process and schedule for fact depositions, to assess
5 whether it is also appropriate to set a process and schedule for expert discovery, and to potentially
6 set pretrial and trial deadlines.

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8 Respectfully submitted.

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10 Dated: December 6, 2021

AMY K. VAN ZANT
SHAYAN SAID
ANNA Z. SABER
Orrick, Herrington & Sutcliffe LLP

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12
13 By: /s/ Amy K. Van Zant
AMY K. VAN ZANT
Attorneys for Plaintiffs
Francisco Gudino Cardenas and
14 Troy McFayden, et al. and Liaison Counsel
15 for Plaintiffs

16
17 By: /s/ Sean A. Brady
SEAN A. BRADY
Attorneys for Defendants
Blackhawk Manufacturing Group, Inc.;
18 Ryan Beezley and Bob Beezley; Ghost
19 Firearms, LLC;
20 MFY Technical Solutions, LLC; and
21 Thunder Guns, LLC and Liaison Counsel
22 for Defendants

1 AMY K. VAN ZANT (STATE BAR NO. 197426)
avanzant@orrick.com
2 SHAYAN SAID (STATE BAR NO. 331978)
ssaid@orrick.com
3 ANNA Z. SABER (STATE BAR NO. 324628)
annasaber@orrick.com
4 ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
5 Menlo Park, CA 94025-1015
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6 Facsimile: +1 650 614 7401

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County of San Bernardino
Case No. CIV-DS-1935422

18 **PROOF OF SERVICE**

19 Dept.: CX 104
20 Judge: Hon. William D. Claster

PROOF OF SERVICE

I am employed in the County of San Mateo, State of California. I am over the age of eighteen years old and not a party to this action. My business address is Orrick, Herrington & Sutcliffe LLP, 1000 Marsh Rd., Menlo Park, CA 94025.

On December 6, 2021, I served the following document(s) entitled:

• **JOINT CASE MANAGEMENT CONFERENCE STATEMENT**

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

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

C.D. Michel
Sean A. Brady
MICHEL & ASSOCIATES, P.C.
180 E. Ocean Blvd., Suite 200
Long Beach, CA 90802
cmichel@michellawyers.com
sbrady@michellawyers.com

Attorneys for Defendants
Ghost Firearms, LLC, Thunder Guns, LLC,
Ryan Beezley and Bob Beezley,
and MFY Technical Solutions, LLC

Grant D. Waterkotte
Tina M. Robinson
PETTIT KOHN INGRASSIA LUTZ & DOLIN, PC
5901 W. Century Blvd., Ste. 1100
Los Angeles, CA 90045
gwaterkotte@pettitkohn.com
trobinson@PettitKohn.com

Attorneys for Defendants
Defense Distributors, and
Cody R. Wilson

Michael E. Gallagher
Nicholas T. Maxwell
Kyle J. Gaines
EDLIN GALLAGHER HUIE & BLUM LLP
515 S. Flower St., Ste. 1020
Los Angeles, CA 90071
mgallagher@eghblaw.com
nmaxwell@eghblaw.com
kgaines@eghblaw.com

Attorneys for Defendant
Juggernaut Tactical, Inc

Christopher Renzulli
Howard B. Schilsky
RENZULLI LAW FIRM, LLP
One North Broadway, Ste. 1005
White Plains, NY 10601
crenzulli@renzullilaw.com
hschilsky@renzullilaw.com

Attorneys for Defendant
Juggernaut Tactical, Inc.

Craig A. Livingston
Crystal L. Van Der Putten
LIVINGSTON LAW FIRM
A Professional Corporation
1600 South Main Street, Suite 280
Walnut Creek, CA 94596
clivingston@livingstonlawyers.com
cvanderputten@livingstonlawyers.com

*Attorneys for Defendant
Tactical Gear Heads, LLC*

Robert J. Nelson
Caitlin M. Nelson
**LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP**
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
rmelson@lchb.com
cnelson@lchb.com

*Attorneys for Plaintiffs
Kelley and Denis O'Sullivan et al.*

Germain D. Labat
Guinevere Malley
GREENSPOON MARDER LLP
1875 Century Park East, Suite 1900
Los Angeles, California 90067
germain.labat@gmlaw.com
guinevere.malley@gmlaw.com

*Attorneys for Defendant
POLYMER80, INC.*

Jonathan Lowy
Christa Nicols
**BRADY: UNITED AGAINST GUN
VIOLENCE**
840 First Street, NE Suite 400
Washington, DC 20002
jlowy@bradyunited.org
cnicols@bradyunited.org

*Attorneys for Plaintiffs
Kelley and Denis O'Sullivan et al.*

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

Executed on December 6, 2021 at Menlo Park, California.

/s/ Karin Barnick
Karin Barnick