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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. COAST RUNNER INDUSTRIES, INC., GHOST GUNNER, INC., and DEFENSE DISTRIBUTED, Defendants.	Case No. 37-2024-00020896-CU-MC-CTL Action Filed: May 3, 2024 **Defendants' Reply Memorandum in Support of Defendants' Motion to Strike** Date: February 28, 2025 Time: 10:30 A.M. Dept: C-64 Judge: Hon. Loren Freestone

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ARGUMENT

California's anti-SLAPP statute applies to this action and requires striking all of Plaintiff's claims. The case now proceeds on two distinct tracks. Both are invalid as a matter of law.

Track one is for the primary claims against Coast Runner Industries, Inc.—the only entity that could be seriously considered a proper defendant. The claims against Coast Runner Industries, Inc. fail for a litany of substantive reasons, most notably because the statute in question is a blatant violation of the Second Amendment. The Plaintiff also cannot show a violation of the statute on its own terms because Coast Runner Industries, Inc. was conceived to *comply* with California law—not evade it. All of the opposition's supposed acts of legal evasion are really just proof of successful compliance.

The secondary claims go against Ghost Gunner, Inc. and Defense Distributed—the entities Plaintiff sues *not* because they actually did any of the alleged wrongdoing but because of the technicality that Plaintiff thinks they are alter egos of Coast Runner Industries, Inc. These claims should be dismissed for additional and even clearer reasons. First, the Court lacks personal jurisdiction over these defendants, as all their conduct occurred exclusively in Texas. Second, the alter ego allegations fail to meet the stringent veil-piercing standards required under Texas law. Plaintiff's reliance on mere shared personnel and financial interests is insufficient to override the corporate separateness of these entities.

Indeed, Plaintiff's rampant conflation of legally and factually distinct companies is the action's fundamental flaw—both substantively and procedurally. Substantively, both claim tracks fail because these businesses are *not* one and the same in fact and are *not* one and the same in law. Yet the Plaintiff opted to sue everyone together anyway on the theory that Coast Runner Industries, Inc. has to answer for the protected speech and litigating activity of Ghost Gunner, Inc. and Defense Distributed. Because the Plaintiff's pleading predicates the case on that conflated premise, the anti-SLAPP statute applies to all; and because that conflated premise is wrong both legally and factually, the claims all fail on the merits.

I. THE COMPLAINT IS SUBJECT TO A SPECIAL MOTION TO STRIKE.

Defendants' motion establishes (at 1-6) that the anti-SLAPP statute applies because Plaintiff expressly tries to make all Defendants liable for how one of them (Defense Distributed) opposed California laws regarding CNC milling machines, first with political advocacy and then with prior federal litigation. First, the motion showed (at 2-4) that the statute applies because Plaintiff's claims arise from Defendants' acts furthering the "right of petition . . . under the United States Constitution or

the California Constitution in connection with a public issue." Cal. Civ. Proc. Code § 425.16(b)(1). The motion highlights fourteen paragraphs in the complaint that directly support this contention. Second, the motion showed (at 4-6) that the statute applies because Plaintiff's claims "arise from" Defendants' acts in furtherance of the "right of . . . free speech under the United States Constitution or the California Constitution in connection with a public issue." Cal. Civ. Proc. Code § 425.16(b)(1). Again, the complaint's own allegations confirm this statutory coverage.

Plaintiff's attempt to downplay these allegations fails. After-the-fact reframing cannot change the pleading's realities. The opposition tries (at 9-10) to cast aside the Plaintiff's own pleadings as immaterial "background." But of course, the complaint both *should not* have pleaded these facts if they were immaterial and *did not* plead these facts as immaterial. If the Plaintiff's claims truly did not depend on these facts, they would not have been pleaded in the first place. The rules required the complaint to state just "the facts constituting the cause of action," Cal. Civ. Proc. Code § 425.10, and not anything "irrelevant." Cal. Civ. Proc. Code § 436. Plaintiff here did just that in explaining that the instant suit arises from prior political advocacy and federal litigation. Though their litigating theory is both factually and legally invalid, pleading *validity* is not the question. Pleading *reality* is all that § 425.16(b)(1) cares about, and this complaint makes clear that protected conduct is indeed at the case's gravamen. No amount of post-hoc regret can alter that reality.

The motion did not run from showing that the complaint asserts protected activity as an "element" of the claims in question. It fulfilled that demand, explaining (at 2-6) how this complaint invokes protected activity as proof of both the *actus reus* and *mens rea*.

The page 9 concession is another key point in favor of the statute's application. The opposition says (at 9) that the allegations in question "explain how and why the Coast Runner was conceived," thinking that this scores them a point. But in reality this gives away the issue because *Plaintiff's entire case is fundamentally predicated on how and why the Coast Runner was conceived*.

For example, Paragraph 82—located in the heart of the "Second Cause of Action" rather than the "Factual Background"— directly ties Defendants' prior litigation to the claim's scienter element *by expressly citing prior litigation*. "To show that the Defendants 'seek to evade AB 1089 and AB 1621,' it pleads that 'Defendants only began marketing the Coast Runner after they lost their legal challenge to AB 1621 in California' and says that 'Defendants' attempted end-run around the California legislature's clear intent to prohibit the sale of dangerous CNC milling machines in the state is an unfair

business practice and should not be permitted here.'" Compl. at 27, ¶ 82. The opposition never answers this key point.

The commercial speech argument does not change this result. Even if the *FilmOn.com Inc. v. DoubleVerify Inc.*, 7 Cal. 5th 133 (2019) analysis cited in the motion (at 5 n.3) were dicta, it is correct analysis that properly construes the statute. Section 425.16's exemption applies only to a narrow subset of commercial speech, specifically comparative advertising, not the broad array of protected activities at issue here. *Id.* at 147. And though Plaintiff strains to call *some* of what the Defendants did "comparative advertising," it never even tries to make that point as to *most* of the activity that matters here—the political advocacy and prior federal litigation that trigger the statute's coverage in the first place. In this respect, Plaintiff attempts to shoehorn some of Defendants' conduct into the "comparative advertising" category but entirely ignores the core activities that trigger anti-SLAPP coverage: political advocacy and prior federal litigation. Where a case arises from both covered and exempted conduct, the covered conduct prevails and mandates the statute's application.

II. THE PLAINTIFF CANNOT ESTABLISH A PROBABILITY OF PREVAILING.

Though it was *not* Defendants' burden to disestablish Plaintiff's case, the motion made several key faults clear at the outset. And now that the opposition is on file, even more are evident.

A. Personal Jurisdiction is Lacking.

First, the motion showed (at 7-10) that the Plaintiff cannot prevail on its claims because the lack of personal jurisdiction requires dismissal. The waiver suggestion (made at 15) is wrong because the issue has been timely raised just as the rules anticipate—in a motion that is filed before any pleading and that asserts "lack of jurisdiction of the court over him or her." Cal. Civ. Proc. Code § 418.10. The motion to strike makes this perfectly evident in asserting (at 9) that "Plaintiff cannot establish that the Defendants' relationship with California crosses the threshold necessary to warrant an exercise specific jurisdiction." And under Section 418.10(e), it is perfectly proper to put this jurisdictional argument in a motion that includes other non-jurisdictional issues. *See* Cal. Civ. Proc. Code § 418.10(e) ("no act by a party who makes a motion under this section, including filing an answer, demurrer, or motion to strike constitutes an appearance, unless the court denies the motion made under this section.").

Substantively, the Plaintiff's only colorable case for personal jurisdiction concerns Coast Runner Industries, Inc. The motion (at 7) established—and Plaintiff does not seriously contest—that "personal jurisdiction is clearly absent as to Defendants Ghost Gunner Inc., and Defense Distributed." The key

arguments about those defendants remain unanswered. All of their conduct occurred only *in Texas* and concerned only other entities *in Texas*. The only legal relationship that resulted from that conduct is with Texans and the State of Texas—not Californians or their state. So long as these defendants are analyzed separately as jurisdiction requires, minimum contacts with California are obviously nonexistent.

As to Coast Runner Industries, Inc., the Plaintiff still has no answer to a decisive rule from *Walden v. Fiore*, 571 U.S. 277 (2014): "'minimum contacts' analysis looks to the defendant's contacts with *the forum State itself*, not the defendant's contacts with *persons who reside there*." *Walden*, 571 U.S. at 285 (explained by the motion at 8). *Asahi Metal Indus. Co. v. Superior Court of California*, 480 U.S. 102 (1987), is cited by the Plaintiff (at 16) as supposedly trumping the rule from *Walden*. But *Asahi* could not have undone *Walden* because *Asahi* came *before Walden*. And even if the California contacts in question are considered jurisdictionally relevant, they are certainly not the kind of "continuous and wide-reaching contacts" that *Walden* requires under this analysis. *Walden*, 571 U.S. at 285.

B. The Veil-piercing Claims Fail.

The motion next showed (at 10-12) that Plaintiff also cannot prevail on their claims because the "alter ego" allegations are not properly "stated" and definitely cannot be "substantiated." So, at a minimum, even if claims against Coast Runner Industries, Inc., go on, the veil-piercing-dependent claims against Ghost Gunner Inc. and Defense Distributed cannot survive.

The opposition says (at 18) that it pleads all claims against "each Defendant individually," citing paragraphs 64-86. But those paragraphs contain no such individualized allegations against Ghost Gunner Inc. and Defense Distributed. All that those paragraphs do is plead the claims against all "Defendants" in unison, using the joint label in a conclusory fashion without actually parsing out parties. The specific allegations actually driving the complaint come earlier and make perfectly clear that alter ego liability is the *only* way of keeping Ghost Gunner, Inc. and Defense Distributed in the case.

No identified case from Texas (both sides agree it is the controlling jurisdiction) upholds veil piercing on analogous facts. Partially overlapping personnel and partially overlapping control are the Plaintiff's only meaningful points. But under both *Durham v. Accardi*, 587 S.W.3d 179 (Tex. App.—Houston [14th Dist.] 2019, no pet.) (cited by the motion at 10), and *Endsley Elec., Inc. v. Altech, Inc.*,

378 S.W.3d 15, 24 (Tex. App.—Texarkana 2012, no pet.) (cited by the motion at 11), there "must be something more than mere unity of financial interest, ownership, and control." *Id.* at 25.

Even though the "total dealings" of each corporation are what matter, *Durham*, 587 S.W.3d at 185, the Plaintiff has nothing to say about key matters like "the degree to which corporate formalities have been followed and corporate and individual property have been kept separately." *Id.* Able counsel flyspecked all of the corporate filings and reported no improprieties. And no one has ever suggested that Coast Runner Industries, Inc. cannot answer for all of its debts. No "fraud" or "evasion of existing obligations" exists where, as here, a full-fledged and fully-solvent defendant is ready, willing, and able to answer for all of the business that it carries on.

JNM Express, LLC v. Lozano, 688 S.W.3d 327 (Tex. 2024) (cited by the opposition at 18) does not help the Plaintiff. It refused to pierce the veil for reasons that clearly support the Defendants here: no evidence that the company was not "reasonably capitalized in light of the nature and risk of its business." *Id.* at 334. There is no suggestion of undercapitalization here, let alone any evidence of it. The other cited case, *Hernandez v. Cudco Sols., LLC*, No. 14-21-00605-CV, 2023 WL 2659103, at *5 (Tex. App.—Houston [14th Dist.] Mar. 28, 2023, no pet.), refused to pierce the veil too. With no supporting authorities from the jurisdiction in question, the alter-ego claim has not been "substantiated" and should be struck.

For these reasons, the complaint's alter ego allegations do not suffice at either end of the case. They are both insufficient to make Coast Runner Industries, Inc. liable for what the other defendants did and vice versa. If the case goes on at all, it should be as to Coast Runner Industries, Inc. alone.

C. Coast Runner is not Evading—it is Complying Exactly as the Law Demands.

Assuming their constitutionality, Plaintiff cannot show a violation of these statutes on their own terms because Coast Runner Industries, Inc. does precisely what the law invites. With California's extraordinary new law clearly on a witch hunt for any firearm-specific business, everything about the product that Coast Runner Industries, Inc. deals in *is to the contrary*. The company was established to innovate and market a product designed *for general industrial use*—not one specifically tailored to firearms. Everything Plaintiff points to as statutory "evasion"—distinct brands, labels, instructions, and so forth—is really just proof of *compliance.* This company was conceived to *comply* with California law—not to evade it—and compliance with the law is not a violation. If the law of separate corporate identity means anything, it protects the right to do business free of the political biases and regulatory

hostility that burdened prior industry actors. Coast Runner Industries, Inc. is entitled to operate on that clean legal slate, free from unwarranted legal entanglements based on misplaced political motives. The claims against it should be dismissed in their entirety for failing to come under the statute in question.

D. AB 1621 and AB 1089 are Unconstitutional.

The motion also showed (at 12-14) that Plaintiff cannot prevail on its claims because enforcing AB 1621 and AB 1089 against the Defendants violates the Second Amendment both facially and as applied here. The Plaintiff's main answer is to say (at 20) that "[n]either California Civil Code § 3273.62 or California Penal Code § 29185 implicates conduct protected by the Second Amendment." But no appellate court has ever concluded that for good reason. The Plaintiff's threshold point is plainly wrong. As a matter of law, these laws *do* implicate the Second Amendment inquiry of *Bruen* and its progeny.

To make the position clear, Defendants' point is *not* that these activities lack a textual hook and are protected anyhow. The point is that the requisite textual hook exists because the Second Amendment phrase "keep and bear Arms" necessarily entails acquiring and/or making personal firearms. All of the leading circuit decisions on this issue support the Defendants. *See Luis v. United States*, 578 U.S. 5, 26-27 (2016) (Thomas, J., concurring in the judgment) ("Constitutional rights thus implicitly protect those closely related acts necessary to their exercise."). *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011), is particularly instructive: "The right to possess firearms for protection implies a corresponding right to acquire and maintain proficiency in their use; the core right wouldn't mean much without the training and practice that make it effective." *Id.* So too are older cases that demonstrate the tradition's long history. *See Andrews v. State*, 50 Tenn. 165, 178 (1871) (the "right to keep arms, necessarily involves the right to purchase them, to keep them in a state of efficiency for use, and to purchase and provide ammunition suitable for such arms, and to keep them in repair"). Additional opinions to be followed on this point are *Mock v. Garland*, 75 F.4th 563, 588 (5th Cir. 2023) (Willett, J., concurring) ("protected Second Amendment 'conduct' likely includes making common, safety-improving modifications to otherwise lawfully bearable arms), and *Ill. Ass'n of Firearms Retailers v. City of Chicago*, 961 F. Supp. 2d 928, 930 (N.D. Ill. 2014) ("the right to keep and bear arms . . . must also include the right to acquire a firearm . . ." (emphasis in original)). All of these authorities were deployed in the motion and went wholly unanswered by the opposition.

Once it is determined that AB 1621 and AB 1089 implicate the Second Amendment's protections, the inquiry ends quickly because Plaintiff has obviously failed to meet the burden of demonstrating requisite historical tradition supporting these laws. A more "nuanced approach" is not needed and inappropriate because plenty of authorities from the relevant time period speak directly to the issue in question—overwhelmingly favoring Defendants. *See* Joseph G.S. Greenlee, *The American Tradition of Self Made Arms*, 54 St. Mary's L.J. 35, 66 (2023).

The unregulated self-manufacture of firearms was common in the American colonies, beginning with gunsmiths who made and repaired militia and hunting weapons and were "extremely important and highly valued in their communities." *Id.* at 9. Colonists possessed both the express right to import whole firearms *and the parts necessary to make their own firearms*. *Id.* at 9-10 (citing Francis Newton Thorpe, The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America 3787–88 (Francis Thorpe ed., 1909)). While "[i]n the large gunsmith shops of the cities it is probable that many minds were given to the making of a gun . . . in the smaller shops which formed the great majority—mere cabins on the outskirts of the wilderness—one man with or without an apprentice did every part of the work." Charles Sawyer, Firearms in American History 145 (1910); *see also* James B. Whisker, The Gunsmith's Trade 5 (1992).

During the Revolutionary War, when the British attempted to prevent the Americans from acquiring firearms and ammunition, Americans were forced to manufacture their own firearms and gunpowder to survive. *See Greenlee*, *supra*, at 12–15 (citing M.L. Brown, Firearms in Colonial America: The Impact on History and Technology 1492-1792 127 (1980)). Due to the circumstances of the war, "[n]early every able-bodied male between 16 and 60 . . . [had] to provide his own arms" and some men "built their arms themselves." *Id.* at 25. "When the colonies faced major arms shortages throughout the war, domestic arms manufacturing filled the void." *Id.* at 16. Indeed, the colonies themselves solicited firearm manufacturers, including those engaged in private manufacture and others outside of the firearms industry, to increase domestic production. *Id.* at 18–23.

Thomas Jefferson understood the right very well. Describing the landscape of firearms in early America in 1793, he wrote that "[o]ur citizens have always been free to make, vend, and export arms. It is the constant occupation and livelihood of some of them." *Letter from Secretary of State Thomas*

Jefferson to British Ambassador to the United States George Hammond, May 15, 1793, *in* 7 The Writings of Thomas Jefferson 325–26 (Paul Ford ed., 1904).[1]

Plaintiff's supposedly modern notion of home firearm production is not modern at all. Although some early riflemakers forged their firearm parts from scratch, "there were gunsmiths who did not forge out their barrel blanks, but purchased them in bulk from some factory like that of Eliphalet Remington." John G.W. Dillin, The Kentucky Rifle 96 (1975). These riflemakers then fitted their barrels "to hand-made stocks with American factory or English locks." *Id.*

This tradition of personal gunmaking—free from any major federal regulation whatsoever—continued into the nineteenth and twentieth centuries, when "[m]any of the most important innovations in firearms technology began not in a federal armory or major firearms manufactory, but in private homes and workshops." Greenlee, *supra*, at 35. Such innovations include "[t]he most popular rifle in America today . . . the AR-15, owned in the tens of millions . . . [whose] roots are in homebuilding." *Id.* at 39.

During all of these foundational time periods, anyone with the requisite skill had an essentially unfettered right to build their own firearms; "[o]ne need not have had a wealthy patron or sponsor, or work for king and nobility, to make guns." Greenlee, *supra*, at 41 (internal citation omitted); Whisker, *supra*, at 6 ("Even those apprentices who had never completed an apprenticeship might enter the trade. No guild, union or government agency attempted to regulate the gun making business….He need not take any examination. He need not present one of his guns to any examining board."); *id.* at 90 ("Gunsmiths considered it to be their right to make guns without regulation or interference.").

Deviations from this historical tradition are decidedly few and modern. No restrictions were placed on the self-manufacture of firearms for personal use in America during the seventeenth, eighteenth, or nineteenth centuries. *See* Greenlee, *supra*, at 40. Rather, "[a]ll such restrictions have been enacted within the last decade." *Id.* At the state level, it was not until 2016 that a small minority of states began to regulate the manufacture of arms for personal use. *Id.* at 42. Hence, there is no American

[1] After the Revolutionary War, "gunsmithing was a universal need in early America" and "many early Americans who were professionals in other occupations engaged in gunsmithing as an additional occupation or hobby." Greenlee, *supra*, at 29. This tradition extended to pioneers, mountain men, and explorers whose need to make and repair firearms was a survival necessity. *Id.* at 32.

historical tradition of regulating the self-manufacture of firearms whatsoever—let alone a tradition supporting what California has done with these new laws.

CONCLUSION

The motion to strike should be granted and Defendants' awarded their fees and costs.

Respectfully submitted,

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