DOCKET NUMBER FST CV 15 6048103-S

DONNA L. SOTO, ADMINISTRATRIX	)	SUPERIOR COURT
OF THE ESTATE OF VICTORIA L.	)	
SOTO, DECEASED, ET AL.	)	JUDICIAL DISTRICT OF FAIRFIELD/BRIDGEPORT
	)	AT BRIDGEPORT
v.	)	
	)	
BUSHMASTER FIREARMS	)	
INTERNATIONAL, LLC, ET AL.	)	APRIL 22, 2016

RIVERVIEW DEFENDANTS'
MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION
TO STRIKE PLAINTIFFS' FIRST AMENDED COMPLAINT

The Defendants in the above-referenced matter, Defendants Riverview Sales, Inc. and David LaGuercia (Riverview Defendants), pursuant to Practice Book § 11-10 respectfully file this Memorandum of Law in support of their Motion to Dismiss the Plaintiffs' First Amended Complaint.

Rather than duplicate the arguments of the Remington Defendants and Camfour Defendants herein, the Riverview Defendants request that this Court take judicial notice of all of the Remington Defendants' and Camfour Defendants' arguments, standards of review, and citations found in the record of this file as the Remington Defendants' Memorandum of Law in Support of their Motion to Strike Plaintiffs' First Amended Complaint dated April 22, 2016 and Memorandum of Law in Support of Defendants Camfour, Inc.'s and Camfour Holding, Inc.'s Motion to Strike the First Amended Complaint, also dated April 22, 2106 and incorporate those

backgrounds, arguments, standards of review and citations herein and make them a part hereof.

Like the Remington Defendants and Camfour Defendants, the Riverview Defendants are immune from the Plaintiffs' claims pursuant to the Protection of Lawful Commerce in Arms Act. 15 U.S.C. § 7901 *et seq*. ("PLCAA"). Contrary to federal law, Plaintiffs seek to hold the Riverview Defendants responsible for the shooting at Sandy Hook Elementary School under various legal theories, including (1) negligent entrustment, (2) products liability, and (3) violation of the Connecticut Unfair Trade Practices Act ("CUTPA"). (*See, e.g.*, Pls.' First Am. Compl. ("FAC") at Count Three, ¶¶ 213-230.) The PLCAA bars all three claims of Plaintiffs' First Amended Complaint as alleged against the Riverview Defendants.

The PLCAA was enacted to protect, *inter alia*, firearm dealers from civil actions for damages and other relief resulting from the criminal or unlawful use of firearms by third parties. 15 U.S.C. § 7901(b)(1). By providing immunity for such actions, Congress focused specifically on litigation that had "been commenced against manufacturers, distributors, dealers, and importers of firearms that operate as designed and intended, which seek money damages and other relief for the harm caused by third parties, including criminals." 15 U.S.C. § 7901(a)(3). Congress found these lawsuits to be "an abuse of the legal system" and enacted the PLCAA to ensure that those who manufacture firearms are not held "liable for the harm caused by those who criminally or unlawfully misuse them." 15 U.S.C. §§ 7901(a)(5) & (6). This lawsuit falls squarely within the immunity that the PLCAA affords to firearms sellers. As a result, Plaintiffs have failed to state viable claims against the Riverview Defendants. 15 U.S.C. § 7902.

Additionally, the CUTPA claims fail because (1) Plaintiffs do not allege that they are consumers of the products sold by the Riverview Defendants and are not competitors, or other business persons with a consumer or commercial relationship to Riverview Defendants; (2) nor

have Plaintiffs alleged the type of financial injury that CUTPA was enacted to redress; (3) the CUTPA claims are barred by the 3-year statute of limitations; (4) the CUTPA claims are barred by the exclusivity provision of the Connecticut Product Liability Act ("CPLA"); and (5) the CUTPA claims are barred by § 42-110c(a).

Just as Plaintiffs' claims are barred as to Remington Defendants and Camfour Defendants, they are likewise barred as to the Riverview Defendants.

Concerning negligent entrustment, the Plaintiffs do not allege that the firearm at issue was supplied to the person who used the firearm to harm the Sandy Hook Plaintiffs. The PLCAA, as cited in Remington Defendants' and Camfour Defendants' memoranda, requires that for the "negligent entrustment" exception to apply, the firearm must be entrusted to the person who caused the alleged harm to the Plaintiffs.

The PLCAA states in relevant part as follows:

> …[T]he term "negligent entrustment" means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

15 U. S. Code § 7903 (5)(B).

Nowhere in their First Amended Complaint do the Plaintiffs allege that the Bushmaster firearm at issue was sold to or supplied by Riverview Defendants to Adam Lanza, the alleged shooter and causer of the harm to the Plaintiffs. It logically follows that if the Riverview Defendants did not supply the product to the "person to whom the product is supplied", then they could not have known or reasonably should have known, the product would have been used in a manner involving unreasonable risk of physical injury to Adam Lanza or by him to others.

Therefore, the Plaintiffs' First Amended Complaint does not allege facts that could be found to satisfy the "negligent entrustment" exception to the PLCAA. As stated above, the Riverview Defendants have asked this Court to take judicial notice of the Remington Defendants' and Camfour Defendants' extensive briefs on this issue and incorporate them herein.

Likewise, the Remington Defendants' and Camfour Defendants' extensive brief concerning the Plaintiffs' CUTPA claims. It is clear to the Riverview Defendants' that the statute of limitation to bring a CUTPA claim has expired and the Plaintiffs' do not allege the necessary relationship with the Riverview Defendants in order to bring a CUTPA claim in Connecticut, especially to use as a predicate exception pursuant to the PLCAA as found in 15 U.S. Code § 7903 (5)(A)(iii). Again, this is extensively briefed in Remington Defendants' and Camfour Defendants' memoranda which are incorporated by reference herein.

For the above-stated reasons, the Riverview Defendants respectfully move that this Court grant its instant Motion to Strike and strike all claims against the Riverview Defendants in their entirety (Counts 3, 6, 9, 12, 15, 18, 21, 24, 27, 30, and 33 of the Plaintiffs' First Amended Complaint) and grant such other relief as it deems just and proper.

DEFENDANTS RIVERVIEW SALES, INC.
and DAVID LaGUERCIA

…/s/ Peter M. Berry (417451)…

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of April 2016, I caused to be served a copy of the foregoing documents on all counsel of record listed below, via the Court's ECF system.

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