

NO. FBT CV 15 6048103 S : SUPERIOR COURT
DONNA L. SOTO, ADMINISTRATRIX
OF THE ESTATE OF
VICTORIA L. SOTO, ET AL : JUDICIAL DISTRICT OF FAIRFIELD
V. : AT BRIDGEPORT
BUSHMASTER FIREARMS
INTERNATIONAL, LLC, a/k/a, ET AL : MAY 19, 2016

**PLAINTIFFS' MOTION FOR PERMISSION
TO FILE SURREPLY**

Plaintiffs seek permission to file the attached Surreply in Response to the Remington defendants' Reply Supporting their Motion for Extension, (DN 164.00), insofar as the Remington defendants have in their Reply incompletely and misleadingly represented the course of dealings between the parties.

Attached hereto as Exhibit I is the proposed Surreply.

THE PLAINTIFFS,

By /s/ Alinor C. Sterling
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JURIS #32250

CERTIFICATION

This is to certify that a copy of the foregoing has been mailed, postage prepaid, and emailed this day to all counsel of record, to wit:

*For Bushmaster Firearms International LLC, a/k/a;
Freedom Group, Inc., a/k/a;
Bushmaster Firearms, a/k/a;
Bushmaster Firearms, Inc., a/k/a;
Bushmaster Holdings, Inc., a/k/a
Remington Arms Company, LLC, a/k/a;
Remington Outdoor Company, Inc., a/k/a*

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/s/ Alinor C. Sterling

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EXHIBIT 1

NO. FBT CV 15 6048103 S : SUPERIOR COURT
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**SURREPLY IN RESPONSE TO THE REMINGTON DEFENDANTS'
REPLY IN SUPPORT OF THEIR MOTION FOR EXTENSION OF TIME**

Plaintiffs file this Surreply in response to DN 164.00, the Remington defendants' Reply in Support of their Motion for Extension of Time. This Surreply is intended to supplement the record, insofar as the Remington defendants have only partially represented the course of dealings between the parties. In their Reply at Paragraphs 9-11, the Remington defendants fail to mention that after the parties reached an agreement regarding various discovery issues, the Remington defendants professed a completely different understanding of that agreement, and one that would have resulted in substantial additional delay in their filing Objections to Plaintiffs' First Set of Requests for Production. It was this conduct that led the plaintiffs to seek the Court's intervention.

Following the April 29, 2016 telephone conference, counsel for plaintiffs sent an email confirming the agreement reached. (Ex. A, May 2, 2016 E-mail.) In the conference, the Remington defendants sought to extend their deadline for filing Objections to the Plaintiffs' First Set of Requests for Production to May 16. Counsel for plaintiffs inquired how soon after May 16 counsel for the Remington defendants would be able to meet and confer concerning the Objections. Counsel for the Remington defendants indicated he would be on trial and requested plaintiffs' counsel defer conferring concerning the Objections until June 2. Plaintiffs' counsel recognized this would mean the Objections could not be claimed for the May

26 status conference but nonetheless agreed to these requests as a professional courtesy. Plaintiffs' counsel documented the agreement by e-mail to all counsel.

Eight days later, counsel for the Remington defendants sent an email indicating that he did not share the understanding of the agreement outlined in the e-mail, that he understood the Remington defendants would serve "informal objections" on May 16, after which there would be "subsequent meet and confer conferences," after which the Remington defendants would actually file Objections. (Ex. B, May 9, 2016 E-mail.) Counsel in effect professed to have a completely different understanding, which would relieve him of the obligation to file Objections May 16 and extend that deadline indefinitely. It was this conduct that led plaintiffs to seek the Court's intervention.¹

Finally, the Remington defendants' profession of surprise that plaintiffs would involve the Court, Reply ¶ 15, is disingenuous. Plaintiffs' counsel advised Remington's counsel that as he had indicated he did not agree with what was decided on April 29, counsel would seek the Court's assistance. (Ex. C, May 11, 2016 E-mail.)

¹ In their Reply brief, the Remington defendants indicate they did agree to file Objections by May 16. Reply ¶ 11. In his email of May 9, counsel indicated that was not his agreement. *See* Ex. B ("As I understood our agreement, the informal objections served on May 16 would be the basis for the subsequent meet and confer conferences, and subject to agreements reached or not reached, formal responses and objections would be filed and served thereafter.") The Remington defendants also indicate they "specifically agreed" that "responses would be served on June 13, 2106 [sic]." Reply ¶ 11. But then they change position elsewhere, indicating that it would be impossible to complete production by June 13. Reply ¶ 16.

THE PLAINTIFFS,

By /s/ Alinor C. Sterling

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Bushmaster Holdings, Inc., a/k/a
Remington Arms Company, LLC, a/k/a;
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/s/ Alinor C. Sterling

JOSHUA D. KOSKOFF
ALINOR C. STERLING
KATHERINE MESNER-HAGE

EXHIBIT A

From: Alinor C. Sterling
Sent: Monday, May 2, 2016 11:33 AM
To: James Vogts; Scott Harrington; crenzulli@renzullilaw.com; firm@berrylawllc.com
Cc: Josh D. Koskoff; Katherine Mesner-Hage; Diana V. Orozco; Jessica Roberts; Dolores Vitka
Subject: Soto/Recap of Discovery Agreements from April 29 Conference Call

Counsel,

This email follows up on our conference call of Friday afternoon. During that call, we discussed the plaintiffs' designee re-notices dated April 15, 2015, which set depositions of corporate designees concerning safety policy for each defendant in early to mid-May, and the plaintiffs' first set of requests for production dated November 13, 2015.

The plaintiffs wished to proceed with depositions and production requests and were available to do so. Counsel for Remington represented, however, that defendants' counsel were unavailable for the dates for which the Remington designee depositions were currently noticed, requested that we discuss narrowing the document requests associated with the designee notices, and represented that it would not be possible to collect the requested documents in time for the dates noticed.

We therefore turned to rescheduling the Remington safety designee depositions and then the other designee depositions to new dates. Counsel for Remington represented he would be on trial until June 3. Counsel for Camfour represented he would be on trial in California until the last week in June. Both counsel therefore requested that the plaintiffs do them the courtesy of postponing discovery until these trials are done. Counsel for Remington and Camfour also represented that if these trials complete sooner, they will advise plaintiffs' counsel and we will revisit this scheduling agreement. Counsel also indicated that they need to be personally involved in these aspects of discovery and these matters could not be delegated. Again, plaintiffs were and are ready to proceed, but nonetheless agreed to the following.

The Remington defendants will produce a single safety designee witness in response to the re-notices to both Remington Arms Company, LLC and Remington Outdoor Company, Inc. The designee will be produced on July 13. Remington prefers that deposition be taken in North Carolina, and a location in Madison, Winston-Salem, Greensboro, or Charlotte is acceptable. All counsel will attend in person, so there is no need for a videoconferencing location. We will re-notice the deposition accordingly this week. The Remington depositions scheduled for this week are off. Counsel for Remington will send me an email outlining his objections to the production request associated with the designee notice, and we will have a further discussion to attempt to resolve those issues.

The Camfour defendants will advise this week concerning dates they can produce their safety designee witness or witnesses, as well as acceptable locations for the deposition. The Camfour designee depositions scheduled for May 10 remain on, but will go off once Camfour provides a new date that works for all counsel.

The Riverview defendants will produce David LaGuercia as their designee at KK&B's office in Bridgeport on July 15. We will re-notice this accordingly this week. Mr. LaGuercia is on probation and the terms of his probation require him to stay in Massachusetts. Attorney Berry believes Mr. LaGuercia will be given permission to come to Connecticut for this deposition. If there is any difficulty producing Mr. LaGuercia in Bridgeport, Attorney Berry will advise and we will relocate the deposition to Massachusetts. The Riverview deposition scheduled for May is off.

With regard to the plaintiff's first set of requests for production, Remington and Camfour will file their objections by May 16. Counsel requested that a discussion regarding those objections be deferred until they are not on trial. The

plaintiffs agreed to this request. Remington will discuss its objections with the plaintiffs on June 2. Camfour will discuss its objections with plaintiffs on June 20.

If this was not our agreement, or if I've left something important out, please advise.

Alinor

Alinor C. Sterling

Phone: (203) 336-4421

FAX: (203) 368-3244

EXHIBIT B

From: James Vogts [mailto:jvogts@smbtrials.com]
Sent: Monday, May 9, 2016 1:28 PM
To: Alinor C. Sterling <ASterling@koskoff.com<mailto:ASterling@koskoff.com>>
Cc: 'crenzulli@renzullilaw.com<mailto:crenzulli@renzullilaw.com>'
<crenzulli@renzullilaw.com<mailto:crenzulli@renzullilaw.com>>; Scott Harrington
<SHarrington@dmoc.com<mailto:SHarrington@dmoc.com>>
Subject: RE: Soto/Recap of Discovery Agreements from April 29 Conference Call

Alinor, I'm sorry for not responding more quickly to your email below.

I understood that our agreement was that Remington and Camfour would serve their objections to plaintiffs First Set of Requests for Production by May 16, and thereafter the parties would meet and confer on agreed dates to discuss the objections. As I understood our agreement, the informal objections served on May 16 would be the basis for the subsequent meet and confer conferences, and subject to agreements reached or not reached, formal responses and objections would be filed and served thereafter. Hopefully, there will be few objections left unresolved.

Your email, however, indicates that Remington and Camfour would "file" their informal objections on May 16 with the court. I don't see a reason to "file" informal objections (which may be withdrawn or revised) to discovery requests (which may be clarified and revised) before our meet and confer conferences. I think it makes sense for Remington and Camfour to wait and "file" only those objections on which agreement could not be reached. If the Court has to address any unresolved objections, there won't be confusion over what objections have been withdrawn and what objections remain.

Please let me know if you agree.

Jim

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EXHIBIT C

From: Alinor Sterling <ASterling@koskoff.com>

Date: Wednesday, May 11, 2016 at 2:46 PM

To: James Vogts <jvogts@smbtrials.com>

Cc: "crenzulli@renzullilaw.com" <crenzulli@renzullilaw.com>, Scott Harrington <SHarrington@dmoc.com>, "Josh D. Koskoff" <JKoskoff@Koskoff.com>, "khage@koskoff.com" <KHage@Koskoff.com>

Subject: RE: Soto/Recap of Discovery Agreements from April 29 Conference Call

Jim,

That was not the approach we discussed in our phone conference, and I'm not agreeable to shifting to it now. It seems to me that it is more likely to slow the process than to speed it.

Since we don't have an agreement on how to proceed with regard to the RFPs, I'll file a response to your Motion for Extension of Time.

Thanks,

Alinor

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