

DONNA L. SOTO, ADMINISTRATRIX OF THE ESTATE OF VICTORIA L. SOTO et al.	:	SUPERIOR COURT
	:	
Plaintiffs,	:	JUDICIAL DISTRICT OF FAIRFIELD
	:	
v.	:	AT BRIDGEPORT
	:	
BUSHMASTER FIREARMS INTERNATIONAL, LLC, et al.	:	JULY 18, 2016
	:	
Defendants.	:	

**REMINGTON’S REPLY MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR PROTECTIVE ORDER**

Plaintiffs’ refusal to agree to the entry of a reasonable protective order, protecting the privacy interests of the parties and commercially sensitive information exchanged in discovery, makes little sense. The protective order proposed by Remington is similar to those routinely entered by courts in civil cases throughout Connecticut and by this Court. The order will facilitate, not delay, Defendants’ production of commercially sensitive information to Plaintiffs.

The proposed order does not, as Plaintiffs contend, obstruct the parties’ ability to discover relevant information and does not impose any burdens on their ability to use discovered information to prosecute or defend the case. Indeed, it was in Plaintiffs’ interest to agree to entry of a protective order when it was first proposed by Remington, well over a month ago, but they resisted and then refused to point out specific issues they had with the mechanics of the protective order Remington proposed. Instead, Plaintiffs raise those issues now for the first time, when they could have been resolved weeks ago without the Court’s involvement.

The reason for Plaintiffs’ failure to engage in a meaningful discussion regarding the terms of a protective order is now clear. Plaintiffs needed to resist entry of a protective order in order to publicly sell a false narrative to willing listeners outside the courtroom: that federally licensed

firearm manufacturers conduct their highly-regulated businesses under a cloak of secrecy and their so-called “secrets” will be exposed in this case. Discovery in this case will ultimately reveal this narrative to be untrue, as discovery has repeatedly demonstrated over the years in other similar cases against firearm industry members filed before the enactment of the Protection of Lawful Commerce in Arms Act.

The simple fact is that those in the business of lawfully manufacturing and selling firearms, like other businesses, are entitled to protect their trade secrets and proprietary commercial information from disclosure to their business competitors. A firearm manufacturer should not be required to open its records to the public – and thus to its competitors – simply because it has been sued by private litigants who have been harmed by a criminal’s misuse of a lawfully manufactured firearm.

I. Plaintiffs failed to meet and confer meaningfully on the provisions of a reasonable protective order.

Nearly all of the matters raised in Plaintiffs’ Objection could have been resolved by the parties had Plaintiffs not resisted meeting and conferring with Remington in a meaningful way regarding the terms of a protective order. Remington forwarded its proposed protective order to Plaintiffs on June 2, 2016, and asked for Plaintiffs’ response. Having heard nothing from Plaintiffs, Remington again asked for Plaintiffs’ position on the proposed order 11 days later. On June 14, Plaintiffs responded by indicating they would not join in any motion for a protective order and making it clear that they would not “begin a negotiation concerning terms.” (*See* email communications attached as Exhibit A).

Nevertheless, in their June 14 email, Plaintiffs vaguely referenced non-specific concerns that the proposed order was “overbroad in multiple respects” and specifically suggested that the order should not contain a time frame in which challenges to confidentiality designations were to

be raised. (*Id.*) Remington promptly responded by removing the time frame in which challenges to confidentiality designations were to be raised, and asking again for an opportunity to meet and confer in greater detail to enable it to focus its motion for protective order only on areas of disagreement. (*Id.*) Plaintiffs did not believe a meet and confer was necessary, but ultimately agreed to a telephone conference, which took place on June 15. (*Id.*) Remington pressed Plaintiffs during the telephone conference to articulate areas of disagreement with specific provisions of the proposed order, but was only told that (a) language should be added requiring the parties to designate information as confidential sparingly and (b) they objected to providing notice 14 days before filing confidential information with the court. When Plaintiffs were asked by Remington to come up with an alternative to the notice provision, which would allow time to file a motion to seal under Practice Book § 11-20A, they offered no proposal.

Now, in their Objection, Plaintiffs raise for the first time numerous objections to specific provisions of Remington's proposed order. (Obj. at 12-14.) Remington can agree to nearly all of Plaintiffs' proposed revisions, and attaches a revised red-lined version of a proposed protective order as Exhibit B incorporating those revisions.¹

¹ Remington will agree to a sharing provision but does not agree to Plaintiffs' "sharing" provision because it is too broad. Plaintiffs' provision contemplates that information designated as confidential in this case can be shared not only with attorneys currently prosecuting similar cases against a defendant, but with attorneys contemplating "future cases" against a defendant. *See* ¶ 7.21 of Plaintiffs' Protective Order [Sample]. There is no way to define attorneys with "future cases" and no way to police their use of the confidential information. *See Long v. TRW Vehicle Safety Sys.*, 2010 U.S. Dist. LEXIS 50068 (Dist. Ariz. Apr. 29, 2010) (sharing provision in protective order rejected on the basis that collateral litigants should not be granted unlimited access to defendant's confidential documents).

Remington does not agree to eliminate from its proposed protective order the requirement that confidential information (other than confidential information in the court record) be destroyed, permanently deleted or returned to the designating party. *See* Exhibit B at ¶ 21. Although the parties will be bound by the protective order after the conclusion of the case, non-parties to whom confidential information is provided are not and may not otherwise be subject to the personal jurisdiction of the Court. But even as to parties, destruction, deletion or return of confidential documents will eliminate the need for the Court to police its order following conclusion of the case. Terms providing for the destruction, deletion or return of confidential documents following the conclusion of a case are

II. The proposed protective order does not burden Plaintiffs' ability to litigate their case.

Plaintiffs say that paragraph 16 of the protective order imposes “draconian burdens” on their ability to “litigate the case.” (Obj. at 9.) They are wrong. The purpose behind the first sentence in paragraph 16 – “No party shall file any Confidential Information or information derived therefrom with the Court unless necessary to the resolution of a contested issue and then, only to the most limited extent possible regarding the amount of Confidential Information to be filed” – is to deter a party from tactically filing protected confidential information with the court on issues that are not contested, solely for the purpose of destroying confidentiality. Under paragraph 16, if confidential information is legitimately filed on a contested issue, only the amount of confidential information required to support a position should be filed. And in answer to the question posed by Plaintiffs in their Objection (“how much background is necessary to a contested issue?”), the party filing the confidential information gets to make the decision as to whether (a) the confidential information is “necessary to the resolution of a contested issue” and (b) how much confidential information is required. The designating party may then object to the decision made, and the Court will rule on whether the filing of the confidential information satisfied the requirements of paragraph 16. But at bottom, paragraph 16 is intended to prevent tactical “dumping” of irrelevant confidential information into the court record for the purpose of destroying confidentiality. It is not in any sense “unfair.” (*Id.*)

commonplace in protective orders, particularly in cases featuring extensive electronic discovery. *See, e.g.,* Michael P. Bregenzer, *A Detailed Look at Protective Orders and How to Change them to Meet Your Needs*, ASPLBL, 2009 WL 2514211, *26 (2009) (“Most protective orders provide for the return or destruction of documents designated under the protective order at the end of the case. One of the primary reasons for such provisions is that ‘the lubricating effects of the protective order on pre-trial discovery would be lost if the order expired at the end of the case or were subject to ready alteration.’”) (quoting *Poliquin v. Garden Way Inc.*, 989 F.2d 527, 535 (1st Cir. 1993)).

Plaintiffs also object to the provision in paragraph 16 requiring that a party intending to file confidential information with the court provide advance notice to the designating party 14 days before the information is lodged under Practice Book Sections 74-B and 7-4C. This provision does not, as Plaintiffs argue, give the designating party “substantive advantages in litigation;” nor does it give a designating party “an advance look” at its opponent’s “papers.” (Obj. at 9.) The notice need only include “specific descriptions of the information to be lodged” (e.g. “documents Bates labeled 0001–05”). The party intending to file the confidential information need not provide accompanying motions and briefs in advance of lodging the information under Practice Book Sections 74-B and 7-4C. Plaintiffs’ complaint that the notice provision will prevent them from filing a motion based on confidential information on “short notice” is a red herring because the Court’s April 14, 2016 Order provides that “no matters are to be marked ready on the short calendar, and the court will not schedule or act on any motion, objection or request appearing on the short calendar.” (Dkt. # 140.00, Order at ¶ 4.)²

III. Remington has made a sufficient provisional showing that it possesses proprietary commercial information that should be protected from disclosure to the public and its competitors.

Plaintiffs do not dispute that Remington’s proprietary marketing and pricing information “may be deserving” of “protection” against disclosure to Remington’s competitors. (Obj. at 6.) But Plaintiffs question whether Remington has made a sufficient showing that disclosure of the information could harm Remington’s business interests. (*Id.*) In addition, Plaintiffs confusingly argue that they cannot challenge Remington’s provisional showing without seeing the documents

² Plaintiffs’ proposed alternative to the 14 day notice provision, wherein a designating party is provided just 5 days to prepare and file a motion to seal confidential information in the court record, is unworkable and unreasonable. *See* ¶ 10 of Pls.’ Protective Order [Sample].

alleged to be commercially sensitive and cross-examining Remington's affiant, Robert McCanna. (*Id.*)

Plaintiffs ignore that the protective order proposed by Remington is provisional in nature. After a protective order is entered and confidential documents and information is produced by Defendants, Plaintiffs may challenge designations of confidential information by motion under paragraph 17 of the proposed order. Plaintiffs can file such a motion at any time up to 60 days before trial in 2018. Plaintiffs can choose to support such a motion with deposition testimony from Defendants' witnesses. And, under paragraph 17, the designating defendant will bear the burden of establishing that the confidentiality designation is justified.

Plaintiffs challenge Remington's provisional showing that good cause exists to protect specific categories of commercially sensitive information on the basis that Plaintiffs only "currently seek" records and information created before December 14, 2012. (Obj. at 2.) They argue it is "facially implausible" that public disclosure of marketing and pricing strategies made more than three years ago could possibly harm Remington's business interests today. (*Id.*) Plaintiffs, however, do not know whether Remington still adheres to marketing and pricing strategies developed in prior years, and they do not know the extent to which any proprietary market research conducted by Remington in years past remains the basis for marketing strategies employed today. *See Zenith Radio Corp. v. Matsushita Electrical Corp.*, 529 F. Supp. 866, 891-92 (E.D. Pa. 1981) (noting that old business data may be extrapolated and interpreted by a shrewd competitor to reveal current business strategy, strengths and weaknesses).³

³ Plaintiffs' reliance on *Glenmede Trust Co. v. Thompson*, 56 F.3d 476 (3d Cir. 1995), is misplaced. (Obj. 5.) There, the defendant law firm had produced attorney-client privileged documents under the terms of an agreed provisional protective order, which was not entered by the court. Thereafter, documents produced under the agreement were filed by the plaintiff with the court in support of a summary judgment motion, and the defendant moved for an umbrella protective order protecting the privileged documents from public disclosure based on claims of embarrassment and injury to the law

Remington is not required to come forward now with a detailed analysis on a document-by-document basis simply to obtain provisional protection for commercially sensitive business information. If Plaintiffs challenge Remington's designations of confidential information, additional proof may be required. But again, provisional protective orders, such as the protective order Remington proposes, are intended to facilitate early, efficient production of information alleged to be confidential, while avoiding cumbersome motion practice requiring court confidentiality rulings on a document-by-document basis.

IV. Plaintiffs do not have a First Amendment right to disseminate to the general public discovery materials exchanged in civil litigation.

Plaintiffs assert that they have a First Amendment right to “use discovery materials as they see fit.” (Obj. at 6-7.) The Connecticut Supreme Court, however, disagrees. In *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 292 Conn. 1, 36 (2009), the court held that “raw discovery materials exchanged among parties but not filed with court, are not open to the public.”

The court reasoned that:

Parties are obligated to disclose a wide range of information in the course of discovery to support the disposition of their underlying claims. Much of this material may be related only tangentially to the ultimate resolution of the issues presented and may have little to no impact on judicial action. The principles underlying public access to such material, and consequently, unfettered access to discovered material not filed with the court has never been the norm.

Id. (internal citations omitted). Indeed, the court in *Rosado* observed that public access to discovery materials might have “unintended adverse effects.” *Id.* at n. 28. Under the threat of public disclosure, “parties might more vigorously contest discovery requests,” ultimately resulting in less “access to information” while consuming “scarce judicial resources” in cases of interest to

firm's reputation. The court merely held that the defendant's general allegations of reputational injury were insufficient to justify “judicial endorsement of an umbrella confidentiality agreement.” *Id.* at 484.

third parties. *Id.* As Plaintiffs well know, but refuse to acknowledge, Remington’s proposed protective order serves these precise interests: Plaintiffs gain access to Defendants’ proprietary commercial information subject to provisional restrictions on disclosure to third parties, which will promote the timely production of documents and information without court intervention.

Plaintiffs’ reliance on *Seattle Times v. Rhinehart*, 467 U.S. 20, 32 (1984), is misplaced. In *Seattle Times*, the United States Supreme Court expressly held that “[a] litigant has no First Amendment right of access to information made available only for the purpose of trying his suit.” *Id.* (citing *Zemel v. Rusk*, 381 U.S. 1, 16-17 (1965) (“The right to speak and publish does not carry with it the unrestrained right to gather information.”)). The court noted that “pretrial depositions and interrogatories are not public components of a civil trial” and “restraints placed on discovered, but not yet admitted information”—such as those set forth in Remington’s proposed protective order— “are not a restriction on a traditionally public source of information.” *Id.* at 33.⁴

The same principles that justify restrictions on a litigant’s ability to disseminate discovery materials freely support restrictions on the public’s right to access those materials. *See Rosado*, 292 Conn. at 36; *see also Welch v. Welch*, 48 Conn. Supp. 19, 26-27 (2003) (“Discovery involves the use of compulsory process to facilitate orderly preparation for trial, *not to educate or titillate the public.*”) (emphasis in original). There is “no right under the First Amendment to publish

⁴ Plaintiffs’ reliance on *United States v. Morton Salt Co.*, 338 U.S. 632 (1950), for the proposition that corporations involved in civil litigation do not have the same rights as individuals to protect material exchanged in discovery from public disclosure is badly misplaced. (Obj. at 1.) The case had nothing to do with public dissemination of discovery materials or an asserted First Amendment right to access or publish such materials. Rather, the defendant sought to avoid providing the Federal Trade Commission (“FTC”) with periodic reports demonstrating its compliance with a court decree, arguing, in part, that the FTC’s order violated the Fourth Amendment proscription of unreasonable searches and seizures. *Id.* at 651-53.

material produced in discovery and a protective order is not a prior restraint of free expression.”
Id. at 28.⁵

Plaintiffs do not cite to a Connecticut case standing for the proposition that the public’s interest in a case is a factor the court must weigh in deciding whether discovery materials containing private or commercially sensitive information should be disclosed to the public. Plaintiffs nevertheless argue that public disclosure of the “confidential information” set forth in paragraph 2 of the proposed protective order is in the public interest because “public safety and health are implicated.” (Obj. at 2.) But Plaintiffs stop short of explaining how public disclosure of commercial information in any of the five categories to which they now object will impact “public safety.” For example, Plaintiffs do not explain how public disclosure of the non-retail prices at which Defendants sell firearms, the number of firearms Defendants have sold, or firearm design drawings and specifications will impact public safety. They also do not explain how the interests of public safety will be served if Defendants’ proprietary market research and strategies are publicly disclosed. It is apparent, however, that these categories of information would benefit Defendants’ business competitors seeking to gain a competitive advantage in the marketplace. Simply because members of the public may be interested in this case is not a reason to allow Remington’s commercially sensitive information to enter the public domain. *See Welch*, 48 Conn. Supp. at 26-27.

⁵ There is, however, a presumption of a public right of access to discovery materials when they become judicial documents. *See Rosado*, 292 Conn. at 46 (“We hold that [Practice Book] § 11-20A codifies the common law presumption of public access to judicial documents only.”) A judicial document is “any document filed that a court may rely on in support of its adjudicatory function.” *Id.* Plaintiffs recognize the important distinction between discovery materials and judicial documents, but then blur the distinction by relying on non-Connecticut decisions addressing the public’s right of access to court records. *See Brown v. Williamson Tobacco Corp.*, 710 F.2d 1165 (6th Cir. 1983) (motion by advocacy group to modify the seal placed on documents filed by the FTC in an administrative action); *United States v. General Motors Corp.*, 99 F.R.D. 610 (motion to unseal documents filed by the government in support of motion for summary judgment).

This case does not concern malfunctioning products or an industry or a company that allegedly conspired to hide a product's latent defects. The dangers attending irresponsible firearms ownership and illegal firearms misuse are a matter of common knowledge. *See, e.g., Mavilla v. Stoeger Industries*, 574 F. Supp. 107, 110 (D. Mass. 1983) ("That death may result from the careless handling of firearms is known by all Americans from an early age."). It is tragic that Plaintiffs lost family members and children in a truly horrible crime, but their losses do not change the rules related to the conduct of discovery or the protections afforded to civil litigants by Connecticut courts.

Dated: July 18, 2016.

THE DEFENDANTS,

REMINGTON ARMS CO., LLC and
REMINGTON OUTDOOR COMPANY, INC.

BY: /s/ Scott M. Harrington/#307196

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed on July 18, 2016 to the following counsel:

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/s/ Scott M. Harrington/#307196
Scott M. Harrington

Exhibit A

James Vogts

From: James Vogts
Sent: Thursday, June 2, 2016 8:54 AM
To: 'Alinor C. Sterling'
Cc: 'crenzulli@renzullilaw.com'; Scott Allan (sallan@renzullilaw.com); 'Scott Harrington'; Andrew Lothson; Berry Law
Subject: Soto
Attachments: Soto - Proposed Protective Order 6_2_16.DOCX

Alinor, attached is a proposed protective order addressing the parties' use of confidential and proprietary information produced in discovery. Please let us know your thoughts.

Jim

James B. Vogts
Swanson, Martin & Bell LLP
330 N. Wabash Ave.
Suite 3300
Chicago, Illinois 60611
(312) 222-8517
jvogts@smbtrials.com

James Vogts

From: James Vogts

Sent: Monday, June 13, 2016 3:47 PM

To: Alinor C. Sterling <ASterling@koskoff.com>

Cc: 'crenzulli@renzullilaw.com' <crenzulli@renzullilaw.com>; Scott Allan (sallan@renzullilaw.com)

<sallan@renzullilaw.com>; Scott Harrington <SHarrington@dmoc.com>; Andrew Lothson <alothson@smbtrials.com>

Subject: Soto v. Bushmaster

Alinor, Remington has assembled an initial production non-proprietary documents that are responsive to many of plaintiffs' requests for production. This production is subject to the parties reaching an agreement on the definition of "AR-style rifle." Please let me know where plaintiffs stand on this issue. If and when an agreement is reached, this initial production documents will be forwarded to you.

Also, please let me know when we can expect plaintiffs' response to the proposed protective order sent to you on June 2.

Jim

James B. Vogts

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jvogts@smbtrials.com

James Vogts

From: Alinor C. Sterling <ASterling@koskoff.com>
Sent: Tuesday, June 14, 2016 9:40 AM
To: James Vogts; Scott Harrington
Cc: Katie Mesner-Hage; Josh D. Koskoff
Subject: Soto/Follow Up regarding Protective Order, Depositions

Jim,

We have carefully considered the Remington Defendants' proposed protective order. We simply do not have enough information concerning the documents Remington will be producing to join Remington in any motion for a blanket confidentiality order. As a procedural matter, therefore, we would ask that Remington promptly file a motion for a protective order. We appreciate your attempt to negotiate this matter and so will not seek production forthwith, but in response we will expect that you will make every effort to get this motion heard promptly. Please advise when you will file your motion.

In the interest of paring down the issues before the Court with regard to the terms of any protective order, please be advised that we view Remington's proposed order as overbroad in multiple respects. We believe it more appropriate to emphasize that the confidentiality designation should be used sparingly, and to avoid imposing any time frame in which a challenge to a confidentiality designation may be made. When filing papers in court, we will of course select the papers to be filed in good faith, but believe it inappropriate to be burdened with any special obligations to continue to protect confidentiality, unless the parameters for establishing what is to be kept confidential are much more carefully and narrowly drawn. I make these observations not to begin a negotiation concerning terms, but rather to give you some sense of what issues we already take with the substance of Remington's proposed order.

You were going to let us know whether your witnesses are available to proceed for deposition July 6 and 8, and whether you can produce the new designee noticed for July 13 – please advise as to that as well.

We should have a response to you regarding the definition of AR-15 style rifle later today or tomorrow.

Alinor

James Vogts

From: James Vogts

Sent: Tuesday, June 14, 2016 12:02 PM

To: 'Alinor C. Sterling' <ASterling@koskoff.com>

Cc: Katie Mesner-Hage <KHage@koskoff.com>; Josh D. Koskoff <JKoskoff@koskoff.com>; 'crenzulli@renzullilaw.com' <crenzulli@renzullilaw.com>; Scott Allan (sallan@renzullilaw.com) <sallan@renzullilaw.com>; 'Scott Harrington' <SHarrington@dmoc.com>; Andrew Lothson <alothson@smbtrials.com>

Subject: RE: Soto/Follow Up regarding Protective Order, Depositions

Alinor, before defendants file a motion for a protective order, I think we need to meet and confer in greater detail, so that the motion can be focused only on areas of disagreement. You describe two areas of concern in your email below, one of which I understand, the other I do not. If you have other areas of concern, we should discuss them and try to agree on what we can before going to court.

One issue can be addressed now: the proposed protective order is not a "blanket confidentiality order." The confidential subject matters are limited and are set forth in paragraph 2.

Talking through the issues will be more productive than communicating through emails, and I know that counsel for Camfour would like to be involved. So, let's schedule a conference call.

Please let me know when you're available.

Jim

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James Vogts

From: Alinor C. Sterling [mailto:ASterling@koskoff.com]

Sent: Tuesday, June 14, 2016 8:27 PM

To: James Vogts <jvogts@smbtrials.com>

Cc: Katie Mesner-Hage <KHage@koskoff.com>; Josh D. Koskoff <JKoskoff@koskoff.com>; crenzulli@renzullilaw.com; Scott Allan (sallan@renzullilaw.com) <sallan@renzullilaw.com>; Scott Harrington <SHarrington@dmoc.com>; Andrew Lothson <alothson@smbtrials.com>

Subject: Re: Soto/Follow Up regarding Protective Order, Depositions

Jim, I don't think a meet and confer is necessary but I'm happy to oblige you, as long as it can be scheduled soon. I can make time tomorrow or Thursday for a call.

Sent from my iPhone

Exhibit B

FBT-CV15-6048103-S

DONNA L. SOTO, ADMINISTRATRIX OF THE ESTATE OF VICTORIA L. SOTO et al.	:	SUPERIOR COURT
	:	
Plaintiffs,	:	JUDICIAL DISTRICT OF FAIRFIELD
	:	
v.	:	AT BRIDGEPORT
	:	
BUSHMASTER FIREARMS INTERNATIONAL, LLC, et al.	:	JULY 5, 2016
	:	
Defendants.	:	

PROPOSED PROTECTIVE ORDER

The following order (“Protective Order”) is entered pursuant to Practice Book Sections 13-5(7) for the protection against public disclosure of certain proprietary trade secrets, confidential research, business strategies, and commercial information and other information affecting the privacy interests of non-parties, which are disclosed during discovery in this case. This Protective Order does not protect against public disclosure of information and documents filed with the Court. The Court finds that good cause exist for entry of this Protective Order.

Definitions

1. The following definitions apply to this Protective Order:

(a) The term “document” or “documents” has the same meaning as in Practice Book Section 13-1(c)(2).

(b) The term “trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, other persons who can obtain economic value from its

disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Conn. Gen. Stats. § 35-51(d).

Confidential Information

2. Information, documents and material in the following categories ~~may be~~ are designated as Confidential Information under the terms of this Protective Order:

- (a) Personal identifying information as defined in Practice Book Section 4-7, and including party and witness residential addresses;
- (b) Proprietary market research conducted by or on behalf of a defendant concerning the product marketplace, product marketing, branding and promotion, and consumer satisfaction and demographics;
- (c) Proprietary marketing, branding, promotional and sales strategies;
- (d) The number of firearms manufactured or sold by a defendant by specific model designations;
- (e) Non-retail product pricing;
- (f) Firearm design drawings and engineering specifications;
- (g) Written agreements to which a defendant is a party containing non-disclosure or confidentiality provisions; and
- (h) The names, addresses and other personal identifying information of firearm purchasers disclosed on firearm sale transaction forms and other records required to be kept and maintained by federal firearms licensees under 27 CFR §§ 478.123, 478.124, 478.124a, 478.125 and 478.126a.

~~The parties retain the right to move the Court to alter these categories, by adding materials which may be designated confidential or by deleting or narrowing such categories. The parties reserve the right to request, by motion, that additional information requested and produced in discovery be designated by the Court as Confidential Information.~~

Purpose

3. This Protective Order shall govern the use and dissemination of all information, documents or materials that are produced by the parties in this action and designated as Confidential Information in accordance with the terms of this Protective Order. This Protective Order is not intended to address or govern claims of work product or privilege that may be asserted by any of the parties, except as otherwise provided in this Protective Order.

Designation and Treatment

4. Any party to this action who produces or supplies information, documents or other materials in this action (hereinafter the “Designating Party”) may designate as “Confidential Information” any information, document or material that falls within the categories set forth in paragraph 2 of this Protective Order. The designation of any information, document or material as “Confidential Information” shall represent a good faith determination by counsel so designating to the Court that there is good cause for the material so designated to receive the protections of this Order. The designation of “Confidential Information” shall be made by affixing on the document or material containing such information, and upon each page so designated if practicable, words that in substance state, “**CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER.**” Any material, document or information for which it is impracticable to affix such a legend may be designated by written notice to that effect with a reasonable description of the material in question. Third parties may take advantage of the provisions of this Protective Order by indicating in writing to the requesting party their intent to comply with its procedures or they may seek separate protection from the Court.

5. At the option of the Designating Party, and to facilitate prompt discovery by allowing inspection or review before formal designation in the manner specified above, all information, material or documents produced in ~~response to a subpoena or~~ discovery ~~request~~ shall be treated as Confidential Information pending inspection and copying. Subject to paragraph 18 of this Protective Order, copies of information, material, and documents selected for copying and reproduced for the inspecting party will lose their status as Confidential Information unless delivered with the necessary legend.

6. All persons having access to Confidential Information shall maintain it in a safe and secure manner to ensure compliance with this Protective Order. Any summary, extract, paraphrase, quotation, restatement, compilation, notes or copy containing Confidential Information, or any electronic image or database containing Confidential Information, shall be subject to the terms of this Protective Order to the same extent as the material or information from which such summary, extract, paraphrase, quotation, restatement, compilation, notes, copy, electronic image, or database is derived.

7. A Designating Party may in good faith redact non-responsive and/or irrelevant ~~information~~ ~~Confidential Information~~ from any document or material. However, unredacted copies of such documents shall be maintained by the Designating Party. Designated attorneys for a Discovering Party and, if necessary, qualified Experts under paragraph 10(c) retained by them, shall have access to the unredacted versions of the documents ~~at a place of the Designating Party's~~ ~~choosing~~ but only for the purpose of ascertaining the appropriateness of any redactions.

8. This Protective Order shall not protect from disclosure information, documents or other material that (a) the Designating Party has not made reasonable efforts to keep confidential; (b) has been produced in any other action or proceeding without confidentiality protection, except

inadvertently produced documents; (c) has been lawfully obtained by and from another source; or (d) has been denied confidential treatment in any other action or proceeding by a final order as to which all appeals and other opportunities to challenge have been exhausted or for which the time for appealing or otherwise challenging has expired.

Limitations on Use

9. Except to the extent expressly authorized by this Protective Order, Confidential Information shall not be used or disclosed for any purpose other than the preparation and trial of this case and in any appeal taken from any order or judgment herein. ~~Nothing designated as Confidential Information shall be used for any commercial, business, marketing, competitive, personal, or other purposes whatsoever.~~

Limitations on Disclosure

10. Except with the prior written consent of the Designating Party, or as expressly authorized by this Protective Order, no person receiving Confidential Information may disclose it to any other person. Nothing in this Protective Order, however, shall be deemed to restrict in any manner the Designating Party's use of its own Confidential Information or the Court's use of Confidential Information for any appropriate judicial purpose. Each party may disclose its own Confidential Information without regard to this Protective Order, unless otherwise prohibited from doing so. Each party may waive previously asserted designations of Confidential with notice to all parties.

11. Access to Confidential Information shall be limited to the following categories of persons ("Qualified Persons):

- (a) All counsel of record, including staff persons employed by such counsel;

(b) The parties, but only to the extent reasonably necessary to the litigation of this case;

(c) Any consultant, investigator or expert (collectively “Expert”) who is assisting in the preparation and/or trial of this action, but only to the extent reasonably necessary to enable such Expert to render such assistance;

(d) Any deponent or witness who is reasonably believed to have been eligible to have access to Confidential Information by virtue of his or her employment or other affiliation with the Designating Party, and other non-party witnesses deposed in this case but only for the time reasonably necessary to question the witness;

(e) Counsel not of record in this case who are presently representing clients in a case against the Designating Party, which arises out of the same or similar set of facts, transactions or occurrences, provided that before disclosing Confidential Information to such counsel, the Designating Party (1) must receive notice of the intention to disclose Confidential Information to such counsel; (2) must have the opportunity to move for a protective order in the case in which counsel is involved; and (3) a ruling on the motion for protective order must be issued.

(f) Court reporters, videographers and outside vendors performing litigation support services for parties in this case; and

(g) The Court and its personnel.

12. Any person to whom Confidential Information may be disclosed pursuant to this Protective Order, except counsel of record identified in this Protective Order, staff persons employed by such counsel, this Court and its personnel, shall first have an opportunity to read a copy of this Protective Order and shall agree in writing to the non-disclosure terms of the

Confidentiality Acknowledgment annexed hereto as Exhibit A (“Confidentiality Acknowledgment”) before receiving any Confidential Information. Only counsel of record may disclose Confidential Information to another Qualified Person and they must receive the signed Confidentiality Acknowledgment before disclosing the Confidential Information to any Qualified Person other than other Counsel of Record, staff persons employed by such counsel, this Court and its personnel. Counsel for the party obtaining a person’s signature on the Confidentiality Acknowledgment shall retain the original signed acknowledgment until such time as the identity of the signatory is disclosed or until good cause for earlier disclosure of the acknowledgment is shown.

13. If a party or other person receiving Confidential Information pursuant to this Protective Order thereafter receives a subpoena or order to produce such information in any other action or proceeding before any other court or agency, such party or person shall, if there are fewer than ten (10) days to comply, immediately, if possible, or within two (2) days if not, or if there are more than ten (10) days, at least seven (7) court days prior to the due date of compliance, notify the Designating Party of the pendency of the subpoena, public records request or order in writing. To give the Designating Party an opportunity to obtain such relief, the party or person from whom the information is sought shall not make the disclosure before the actual due date of compliance set forth in the subpoena or order.

Depositions Involving Confidential Information

14. Depositions involving Confidential Information shall be treated, as follows:

(a) Portions of a deposition or depositions in their entirety may be designated Confidential Information by counsel for the deponent or the Designating Party, with respect to

documents or information that it has produced, by requesting such treatment on the record at the deposition or in writing no later than ten (30) days after the date of the deposition.

(b) This Protective Order shall permit temporary designation of an entire transcript as Confidential Information where less than all of the testimony in that transcript would fall into those categories, subject to the following procedure:

(i) The court reporter shall include on the cover page a clear indication that the deposition has been so designated.

(ii) Within ten (30) days of receipt of the final, unsigned deposition transcript by counsel for the Designating Party, such counsel shall advise opposing counsel and the court reporter of the pages, lines and exhibits (if such exhibits are not otherwise so designated) in which Confidential Information appears. The court reporter shall supplement the transcript to indicate the designations. Failure to particularize a designation to opposing counsel within the allotted time shall result in the loss of any designation and shall entitle recipients of the deposition to treat the transcript as non-confidential.

(iii) If a party objects to a page, line, and exhibit designation made pursuant to paragraph 13(b)(ii) of this Order, the party may make an objection using the procedure provided in paragraph 17 of this Order and the procedures of paragraph 17 shall apply to resolution of the objection. The designations shall remain effective until and unless an objection is made and finally resolved.

15. No one may attend, or review the transcripts of, the portions of any depositions at which Confidential Information is shown or discussed, other than persons authorized to receive access to Confidential Information.

Filing or Use of Confidential Information as Evidence

16. No party shall ~~provide file~~ any Confidential Information or information derived therefrom ~~to with~~ the Court unless necessary to the resolution of a contested issue and then, only to the most limited extent possible regarding the amount of Confidential Information to be filed. Whenever possible, a representative example of a type of Confidential Information shall be ~~provided-filed~~, and/or all sections of the Confidential Information not necessary to the Court's resolution of the contested issue shall be redacted. Before any Confidential Information or information derived therefrom is ~~lodged with the Court under Practice Book Sections 7-4B and 7-4C~~ ~~filed with the Court~~, the party or parties ~~intending to lodge~~ ~~file~~ such information shall notify the designating party of their intention to ~~lodge~~ ~~file~~ such information fourteen (14) days before ~~lodging filing~~ the information. The notice to the designating party shall include specific descriptions of the information to be ~~lodged~~ ~~filed~~. ~~After Confidential Information is lodged with the Court pursuant to Practice Book Sections 7-4B and 7-4C,~~ ~~t~~The designating party shall promptly file an appropriate motion under Practice Book Section 11-20A requesting that the information be filed under seal. No Confidential Information or information derived therefrom shall be filed with the Court until such time that the Court has ruled on the designating party's motion under Practice Book Section 11-20A.

Objections to Designations

17. Any party may, not later than sixty (60) days prior to the trial of this case, object to a designation by notifying the Designating Party in writing of that objection and specifying the designated material to which the objection is made. The parties shall confer within fifteen (15) days of service of any written objection. If the objection is not resolved, the Designating Party shall, within fifteen (15) days of the conference, file and serve a motion to resolve the dispute and shall bear the burden of proof on the issue. If no such motion is filed within the stated time period,

the material shall cease to be treated as Confidential. If a motion is filed, information subject to dispute shall be treated consistently with its designation until further order of the Court. With respect to any material which is re-designated or ceases to be subject to the protection of this Protective Order, the Designating Party shall, at its expense, provide to each party which so requests additional copies thereof from which all confidentiality legends affixed hereunder have been adjusted to reflect the re-designation or removed as appropriate.

Inadvertent Waiver

18. Inadvertent failure to designate any information pursuant to this Protective Order shall not constitute a waiver of any otherwise valid claim for protection, so long as such claim is asserted within fifteen (30) days of the discovery of the inadvertent failure. At such time, arrangements shall be made for the Designating Party to substitute properly labeled copies. However, until the receiving party is notified that the information is designated as Confidential Information, the receiving parties shall be entitled to treat the material as non-confidential.

19. In the interest of expediting discovery in these proceedings and avoiding unnecessary costs: (1) inadvertent disclosure in this litigation of privileged information and/or work product shall not constitute a waiver of any otherwise valid claim of privilege, immunity, or other protection; and (2) failure to assert a privilege and/or work product in this litigation as to one document or communication shall not be deemed to constitute a waiver of the privilege, immunity, or protection as to any other document or communication allegedly so protected, even involving the same subject matter. In the case of inadvertently produced privileged and/or work product documents, upon request of the Producing Party, the documents together with all copies thereof and any notes made therefrom shall be returned forthwith to the party claiming privilege and/or work product immunity. Any party may, within five (5) court days after notification of inadvertent

disclosure under this Paragraph, object to the claim of inadvertence by notifying the Designating/Producing Party in writing of that objection and specifying the designated/produced material to which the objection is made. The parties shall confer within fifteen (15) days of service of any written objection. If the objection is not resolved, the Designating Party shall, within fifteen (15) days of the conference, file and serve a motion to resolve the dispute and shall bear the burden of proof on the issue. If a motion is filed, information subject to dispute shall be treated consistently with the Designating/Producing Party's most recent designation until further order of the Court.

Non-Termination

20. Any information or documents designated as Confidential Information shall continue to be treated as such until such time as (a) the Designating Party expressly agrees in writing that the information, documents, testimony or other materials in question are no longer Confidential or (b) there is a finding by the Court that the information or documents are not the proper subject of protection under this Protective Order. Issues regarding the protection of Confidential Information during trial may be presented to the Court as each party deems appropriate.

21. The obligations and protections imposed by this Protective Order, as to any documents not admitted into evidence at trial unless sealed by the Court, shall continue beyond the conclusion of this action, including any appeals, or until the Court orders otherwise. Within sixty (30) days after receipt of a request from the Designating Party, made after this action has concluded and the time for possible appeal has been resolved, Confidential Information (other than exhibits at the official court of record) shall be destroyed, permanently deleted or returned to the appropriate Designating Party. Counsel for any party or third party receiving Confidential

Information in this action shall make written certification of compliance with this provision and shall deliver the same to counsel for each Designating Party within ninety (60) days after such request.

Public Health and Safety

~~21.~~ 22. Nothing in this Order is intended to prevent any party from raising with the Court any concern that the non-disclosure of Confidential Information may have a possible adverse effect upon the general public health or safety, or the administration or operation of government or public office.

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Continuing Jurisdiction

~~22.~~ 23. Any party may petition the Court for a modification of the terms of this Protective Order for good cause shown, after notice and opportunity for a hearing. This Court shall have continuing jurisdiction to modify, amend, enforce, interpret or rescind this Protective Order notwithstanding the termination of this action.

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Dated: Bridgeport, Connecticut

_____, 2016

Hon. Barbara Bellis

EXHIBIT A

FBT-CV15-6048103-S

DONNA L. SOTO, ADMINISTRATRIX OF THE ESTATE OF VICTORIA L. SOTO et al.	:	SUPERIOR COURT
	:	
Plaintiffs,	:	JUDICIAL DISTRICT OF FAIRFIELD
	:	
v.	:	AT BRIDGEPORT
	:	
BUSHMASTER FIREARMS INTERNATIONAL, LLC, et al.	:	
	:	
Defendants.	:	

CONFIDENTIALITY AGREEMENT

The undersigned hereby acknowledges and agrees:

1. I am aware that a Protective Order has been entered in the above-captioned action. I have had the opportunity to read the Protective Order and understand that my willful disclosure of Confidential Information may constitute contempt of court.
2. I will not disclose copies of any Confidential Information to any other person, and will not discuss any Confidential Information with any person except those persons described in the Protective Order under the procedures therein specified.

Name: _____

Address: _____

Telephone No.: _____

Dated: _____