

NO. UWY-CV-14-6026552-S

NUCAP INDUSTRIES, INC. et al.,	)	SUPERIOR COURT
	)	
Plaintiffs,	)	J.D. OF WATERBURY
	)	
v.	)	
	)	
PREFERRED TOOL AND DIE, INC., et al.,	)	
	)	
Defendants.	)	October 11, 2016

**MOTION FOR PROTECTIVE ORDER**

Defendants Preferred Tool and Die, Inc. and Preferred Automotive Components (“Preferred”), hereby move, pursuant to Connecticut Practice Book § 13-15, for entry of a protective order.<sup>1</sup>

**INTRODUCTION**

On May 25, 2016, Plaintiffs Nucap Industries, Inc. and Nucap US Inc. (“Nucap”) served a Third Set of Requests for Production seeking, *inter alia*, (1) all documents reflecting prints of tooling designs, including assembly prints, for any brake shim manufactured by Preferred from January 1, 2013 to present, and (2) all communications between Reynolds and any owner, principal, employee, representative or agent of Preferred, concerning the design of any tooling for all brake shims manufactured by Preferred from January 1, 2013 to the present. For the reasons discussed in Preferred’s Opposition to Nucap’s Motion for Order of Compliance filed on October 7, 2016, which is incorporated herein by reference in its entirety, Preferred objects to producing these documents.

Preferred requests the Court enter a Protective Order limiting discovery to exclude Preferred’s tooling drawings and communications concerning such tooling drawings.

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<sup>1</sup> Concurrent with this Motion, Preferred is filing its Opposition to Nucap’s Motion for Order of Compliance, which is hereby incorporated by reference.

## **LEGAL STANDARD**

The Connecticut Rules of Civil Procedure provide that the Court “may make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense” including that the discovery not be had, that the scope of the discovery be limited to certain matters, or that there be specified terms and conditions relating to the discovery of electronically stored information. Conn. Practice Book § 13-5 (2016). The Court should enter a protective order when the movant has shown “good cause” for its entry. *Id.*

## **ARGUMENT**

A party may obtain discovery of information or production of documents that are “material to the subject matter involved in the pending action” and “reasonably calculated to lead to the discovery of admissible evidence.” P.B. § 13-2. As discussed in Preferred’s Objection, Nucap’s requests are not material to the subject matter and are not reasonably calculated to lead to the discovery of admissible evidence. Nucap has only accused six shims of incorporating trade secrets. The accusations against the six shims are themselves incredibly thin given the substantial differences between Preferred’s and Nucap’s shims and the fact that many of the alleged trade secrets are in the public domain. If the non-accused shims themselves are different, it goes without saying that the tools and patterns used to make them will be different as well.

With respect to all of the other non-accused shims made by Preferred, Nucap could not drum up any basis to allege misappropriation. Thus, unbridled discovery into all of the underlying drawings of the tools used to make not only the six accused shims, but every shim made by Preferred, plus any correspondence concerning the same, far exceeds what is material or reasonably calculated to lead to the discovery of admissible evidence.

Furthermore, neither of the two former Nucap employees that Preferred later employed have worked at Nucap since April 2012. Therefore, any of Preferred’s tooling drawings for brake

shims that only came to market in the last four years could not possibly have been taken from Nucap. Requiring Preferred to gather and produce all of its tooling drawings and related correspondence could only be an attempt to harass Preferred or learn how Preferred creates its tools, a practice which Preferred has been doing for decades and long before Nucap.

Given that Nucap has only accused six shims, and even those are not the same as any Nucap shims, there request for all the underlying tooling drawings for these and every other shim made by Preferred, plus related correspondence, is overly broad and unduly burdensome.

Each shim is manufactured by a process that includes many different stages, each stage having a set of tools that form part of the shim. Therefore, for any one shim, the tooling drawings comprise a series of numerous drawings. For all the shims made by Preferred, this could be thousands of drawings. This will require significant efforts by Preferred to gather and produce. Likewise, to collect and product any communications about such tooling from one of Preferred's tooling designers would potentially require reviewing every communication this individual has had at the company.

Unlike Nucap, which is a large multinational company, Preferred is a small family owned business. This litigation has put a serious burden on Preferred, and requiring Preferred to respond to these broad discovery requests would cause further undue burden.

### **CONCLUSION**

For the foregoing reasons, Preferred respectfully requests that the Court grant this motion and enter the Proposed Protective Order limited discovery to exclude Preferred's tooling drawing and communications concerning such tooling drawings.

October 11, 2016  
Dated

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*ATTORNEYS FOR PREFERRED TOOL AND DIE, INC.  
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 11, 2016, a copy of the foregoing MOTION FOR PROTECTIVE ORDER was served via electronic mail on the following counsel of record:

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10/11/2016  
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